

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

4 IN RE: NATIONAL ) MDL No. 2804  
5 PRESCRIPTION OPIATE )  
6 LITIGATION, ) Case No.  
7 ) 1:17-MD-2804  
8 )  
9 THIS DOCUMENT RELATES TO ) Hon. Dan A.  
10 ALL CASES ) Polster  
11 )

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22  
23  
24  
Thursday, April 25, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
CONFIDENTIALITY REVIEW

Videotaped Deposition of DAVID S.  
EGILMAN, M.D., MPH, held at the Providence  
Marriott Downtown, 1 Orms Street, Providence,  
Rhode Island, commencing at 9:08 a.m., on the  
above date, before Debra A. Dibble, Certified  
Court Reporter, Registered Diplomate  
Reporter, Certified Realtime Captioner,  
Certified Realtime Reporter and Notary  
Public.

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<p>1 APPEARING VIA VIDEO STREAM:            2 Kevin Reardon            3 kevin.j.reardon@gmail.com            4            5 Jay Lichter            6 jlichter@baronbudd.com            7            8 Charles Bachmann            9 cbachmann@seegerweiss.com            10            11 Scott Siegel            12 ssiegel@seegerweiss.com            13            14 VIDEOGRAPHER:            15 Bill Geigert            16            17            18            19            20            21            22            23            24</p>	<p>1 Egilman 2 Poster (8.5 x 11 93            2 copy) Deconstructing            3 the myth that            4 prescribed opioids            5 have a low risk of            6 addiction by Daniel            7 K. Cho, Mark            8 Hocevar, Brown            9 University            10 Egilman 3 IMS Data, David 120            11 Egilman            12 Egilman 4 Green folder marked 141            13 20 - Distribute =            14 Manufacturers            15            16 Egilman 5 My Assignment 164            17            18 Egilman 6 Folder 26 arrow up 232            19 does = arrow up            20 death            21            22 Egilman 7 B.85 253            23            24 Egilman 8 Opinion - McKesson 272            blames manufacturers            and avoids its own            responsibility            Egilman 9 Opinion - HDMA was 276            responsible for sale            of unapproved            opioids            Egilman 10 Opinion - 283            Distributor            marketing drove            sales</p>

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10	opioid market would		10	suspicious order	
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1 PROCEEDINGS  
 2 (April 25, 2019 at 9:08 a.m.)  
 3 THE VIDEOGRAPHER: Good  
 4 morning. We are now on the record.  
 5 My name is Bill Geigert. I'm a  
 6 videographer for Golkow Litigation  
 7 Services. Today's date is April 25th,  
 8 2019, and the time is 9:09 a.m. This  
 9 video deposition is being held in  
 10 Providence, Rhode Island, in the  
 11 matter of National Opioid Litigation.  
 12 The deponent is Dr. David  
 13 Egilman. The court reporter is Debbie  
 14 Dibble, and she will now swear in the  
 15 witness.  
 16 DAVID S. EGILMAN, M.D., MPH,  
 17 having first been duly sworn, was examined  
 18 and testified as follows:  
 19 EXAMINATION  
 20 BY MR. DONOHUE:  
 21 Q. Good morning, Dr. Egilman. My  
 22 name is Matt Donohue. I represent Insys.  
 23 I apologize, but we do have to  
 24 do some housekeeping before we start the

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1 questioning. So I'm going to ask everybody  
 2 that's in the room to identify yourself for  
 3 the court reporter because there are a number  
 4 of people that she needs to know where you're  
 5 sitting. So if you can identify yourself and  
 6 then endeavor to sit in the same spot  
 7 throughout the day, that will aid in the  
 8 accuracy of the transcript.  
 9 So I'll start.  
 10 Matt Donohue with Holland &  
 11 Knight representing Insys.  
 12 MS. FARMER: Jessica Farmer  
 13 with Holland & Knight representing Insys.  
 14 MS. SAULINO: Jennifer Saulino  
 15 from Covington and Burling for McKesson.  
 16 MR. HALPERIN: Greg Halperin.  
 17 MS. SWIFT: Kate Swift for  
 18 Walgreens.  
 19 MS. McENROE: Elisa McEnroe  
 20 from Morgan Lewis for RiteAid.  
 21 MR. HYNES: Paul Hynes of  
 22 Zuckerman Spaeder, for CVS.  
 23 MR. BLANK: Timothy Blank with  
 24 Dechert for Purdue.

Page 16

1 MS. NEWMARK: Jenna Newmark  
 2 with Dechert for Purdue.  
 3 MR. ERCOL: Brian Ercol from  
 4 Morgan Lewis for the Teva defendants.  
 5 MS. WELCH: Donna Welch  
 6 Kirkland & Ellis for Allergan defendants.  
 7 MR. JAFFE: Jonathan Jaffe,  
 8 plaintiffs consultant.  
 9 MS. CONROY: Jayne Conroy,  
 10 Simmons Hanly Conroy, plaintiffs.  
 11 MS. LUCAS: Amy Lucas,  
 12 O'Melveny and Myers for Janssen and  
 13 Johnson & Johnson.  
 14 MS. NAKAMURA: Angel Nakamura  
 15 of Arnold and Porter, the Endo and  
 16 Parr defendants.  
 17 MS. FULMERTON: Tara Fulmerton,  
 18 Jones Day, on behalf of Wal-mart.  
 19 MR. BAILEY: Clayton Bailey  
 20 Covington & Burling for McKesson.  
 21 MS. SACKS: Shayna Sacks,  
 22 Napoli Shkolnik for plaintiffs  
 23 Cuyahoga County.  
 24 MR. HAHN: Bill Hahn, Barnes &

Page 17

1 Thornburg on behalf of H.D. Smith.  
 2 MS. HURD: Ellyn Hurd, Simmons  
 3 Hanly Conroy for the plaintiffs.  
 4 MR. MIGLIORI: Donald Migliori,  
 5 Motley Rice, on behalf of Summit  
 6 County and plaintiffs.  
 7 MR. KROEGER: Rick Kroeger.  
 8 Simmons Hanly Conroy on behalf of  
 9 plaintiffs.  
 10 MR. GOLDSTEIN: Josh Goldstein,  
 11 Ropes & Gray on behalf of  
 12 Mallinckrodt, LLC.  
 13 MR. GHOSH: Pratik Ghosh,  
 14 Kirkland and Ellis, Allergan  
 15 defendants.  
 16 SPECIAL MASTER COHEN: Special  
 17 Master David Cohen.  
 18 Hey, there's air conditioning  
 19 in this room, and I can tell you that  
 20 Debbie cannot hear you if you're back  
 21 there, so speak very loudly, please.  
 22 MR. DONOHUE: And then we have  
 23 a number of people on the telephone,  
 24 but you already have those, right?



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1 THE REPORTER: Are you all  
2 right if I just indicate those on the  
3 transcript appearances?  
4 MR. DONOHUE: I'm fine with  
5 that.  
6 Next, just housekeeping matter  
7 is, I want to explain on the record  
8 what we've marked as our first  
9 exhibit.  
10 So marked as Exhibit 1A, is a  
11 binder entitled "Egilman Report and  
12 Exhibits Volume 1 of 3." Marked as  
13 Exhibit 1B is a black binder entitled  
14 "Egilman Report and Exhibits, Volume 2  
15 of 3."  
16 Marked as Exhibit 1C is a black  
17 binder entitled "Egilman Report and  
18 Exhibits, Volume 3 of 3."  
19 Marked as Exhibit 1D is a  
20 binder entitled "Egilman Opinions  
21 Revised." And that captures the  
22 revised material that we got produced  
23 by plaintiffs.  
24 Marked as Exhibit 1E is a flash

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1 drive. It has written on it  
2 "Dechert 1," and it contains Excel  
3 spreadsheets as part of Dr. Egilman's  
4 report.  
5 And marked as Exhibit 1G is a  
6 black flash drive. This contains  
7 Dr. Egilman's report, exhibits, the  
8 notice of deposition, and resource  
9 materials.  
10 (Whereupon, Deposition Exhibit  
11 Egilman 1A, Egilman Expert Report and  
12 Exhibits, Volume 1 of 3 binder, was  
13 marked for identification.)  
14 (Whereupon, Deposition Exhibit  
15 Egilman 1B, Egilman Expert Report and  
16 Exhibits, Volume 2 of 3 binder, was  
17 marked for identification.)  
18 (Whereupon, Deposition Exhibit  
19 Egilman 1C, Egilman Expert Report and  
20 Exhibits, Volume 3 of 3 binder, was  
21 marked for identification.)  
22 (Whereupon, Deposition Exhibit  
23 Egilman 1D, Egilman Opinions Received  
24 4-23-2019 binder, was marked for

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1 identification.)  
2 (Whereupon, Deposition Exhibit  
3 Egilman 1E, thumb drive, (DECHERT1),  
4 was marked for identification.)  
5 (Whereupon, Deposition Exhibit  
6 Egilman 1F, 5-25-19 Report of David S.  
7 Egilman MD, MPH, was marked for  
8 identification.)  
9 (Whereupon, Deposition Exhibit  
10 Egilman 1G, thumb drive, was marked  
11 for identification.)  
12 Q. (BY MR. DONOHUE) So that was  
13 all part of Dr. Egilman's report and  
14 accompanying materials.  
15 This is -- if anyone needs to  
16 look at the report or the exhibits  
17 electronically, I have that hooked up to my  
18 computer right now. And so that's what we'll  
19 be looking at, 1G, if we do that.  
20 And then finally, marked as  
21 Exhibit 1F is just the report of Dr. Egilman  
22 dated March 25, 2019, and it's in a spiral  
23 binding for easy access.  
24 Sorry about that distraction.

Page 21

1 Dr. Egilman, when were you  
2 retained in this litigation?  
3 A. November of last year?  
4 Q. Do you recall --  
5 UNIDENTIFIED SPEAKER: Can you  
6 speak up please? We cannot hear you  
7 down here. To the witness.  
8 THE WITNESS: November of last  
9 year.  
10 Q. (BY MR. DONOHUE) Do you recall  
11 when in November of 2018 you were retained?  
12 A. Second or third week.  
13 Q. Second or third week.  
14 Who retained you?  
15 A. Ms. Conroy.  
16 SPECIAL MASTER COHEN: Let me  
17 interrupt and ask if there's any way  
18 to mic the witness, because this room  
19 has that -- the loud air conditioning.  
20 It's hard for me to hear him, so I  
21 know those folks can't.  
22 MR. BLANK: We can't hear a  
23 word.  
24 MR. DONOHUE: I don't know if

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1 the videographer has a mic.  
2 UNIDENTIFIED SPEAKER: It's  
3 very difficult to hear on the phone.  
4 MR. DONOHUE: Let's go off the  
5 record for a second and see if we can  
6 fix this.  
7 THE VIDEOGRAPHER: Off the  
8 record. The time is 9:16.  
9 (Recess taken, 9:15 a.m. to  
10 9:24 a.m.)  
11 THE VIDEOGRAPHER: We are back  
12 on the record at 9:25.  
13 Q. (BY MR. DONOHUE) Dr. Egilman,  
14 before the break, you had testified that  
15 Ms. Conroy retained you in the second or  
16 third week of November 2018 for this  
17 engagement. Do I have that right?  
18 A. Yes.  
19 Q. And how did Ms. Conroy retain  
20 you?  
21 A. I think it was a phone call.  
22 Q. And what were you retained to  
23 do?  
24 A. Somewhere here I have printed

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1 assignments.  
2 There it is.  
3 Okay. So I was asked to  
4 determine within a reasonable degree of  
5 medical and scientific certainty whether or  
6 not various defendants working together  
7 and/or separately were significant factors of  
8 causing the opioid epidemic.  
9 Q. Were you retained to do  
10 anything else?  
11 A. That was my assignment.  
12 Q. Did you enter into a written  
13 engagement with Ms. Conroy?  
14 A. No.  
15 Q. Do you have an oral agreement  
16 with respect to your engagement here?  
17 A. Yes.  
18 Q. What are the terms of the oral  
19 agreement that you have with Ms. Conroy with  
20 respect to your engagement?  
21 A. I'm not sure I understand the  
22 question.  
23 Q. Well, with respect to your  
24 engagement in this litigation, first of all,

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1 what do you understand you are retained to do  
2 in the litigation -- strike that.  
3 With respect to your engagement  
4 in this litigation, what case or cases are  
5 you retained as an expert on?  
6 A. In the MDL, Cuyahoga and Summit  
7 County case.  
8 Q. Are you retained as an expert  
9 by Ms. Conroy in any other case?  
10 A. No.  
11 MS. CONROY: Objection.  
12 Q. (BY MR. DONOHUE) Are you  
13 currently retained as an expert by any of the  
14 plaintiffs' firms in the MDL action in any  
15 other case?  
16 A. No.  
17 Q. Have you been providing, with  
18 respect to your engagement in this  
19 litigation, any consulting advice?  
20 MS. CONROY: Objection.  
21 THE WITNESS: I'm not sure I  
22 understand the -- what you mean by  
23 "consulting advice."  
24 Q. (BY MR. DONOHUE) is it your

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1 understanding that you've been retained in  
2 this litigation as a testifying expert?  
3 A. Yes.  
4 Q. Do you understand, if I use the  
5 term "consulting expert," what that means?  
6 A. Yes.  
7 Q. Have you been retained as a  
8 consulting expert in this litigation?  
9 A. Maybe I understood what it  
10 means, because my understanding was that  
11 you're either a testifying or a consulting  
12 expert. So if I'm a testifying expert, I  
13 can't be a consulting expert at the same  
14 time. So maybe I didn't understand the  
15 difference. But that was my understanding of  
16 the difference.  
17 Q. Prior to this engagement, have  
18 you done any other engagements with  
19 plaintiffs' counsel?  
20 MS. CONROY: Objection.  
21 THE WITNESS: Please define  
22 "engagement."  
23 Q. (BY MR. DONOHUE) In other  
24 words, have plaintiffs' counsel retained you

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1 in the past for expert services in  
2 litigation?  
3 A. Do you mean Ms. Conroy?  
4 Q. We can start with Ms. Conroy.  
5 A. Yes.  
6 Q. How many times?  
7 A. I think there were three cases  
8 for Federal-Mogul, and there were three  
9 opioid cases to 2003, 2005. Those are Purdue  
10 cases.  
11 I think that's all I've done at  
12 her request working with her.  
13 Q. With respect to the three  
14 opioid cases that you were retained by  
15 Ms. Conroy's firm, what was the nature of  
16 your expert testimony in those cases?  
17 A. Well, do you want the short  
18 answer or a long answer?  
19 Q. Well --  
20 A. I mean, I have the transcript  
21 of the deposition here. I have my -- part of  
22 my report is incorporated in this report.  
23 That's the short answer. I can  
24 give you the long answer that goes through

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1 the details of what I can recall testifying  
2 about.  
3 Q. No, I don't want the long  
4 answer, but if you could tell us what your  
5 assignment was in those three opioid cases  
6 that you were retained in 2003 to 2005, that  
7 would be helpful.  
8 A. I don't remember a specific --  
9 what the specific assignment was at this  
10 time, but the report, the deposition, there  
11 were, I think, several reports and  
12 depositions would have been my response to  
13 the assignment. I don't know if I explicitly  
14 was asked for my assignment in a deposition,  
15 or whether I included that in the report. I  
16 don't recall.  
17 Q. In the past, have you been  
18 hired as an expert for litigation services by  
19 Motley Rice?  
20 A. I'm not sure who I was retained  
21 by, but I was in a case that Motley Rice  
22 tried. I was retained by Orrick, I think, in  
23 that case. And there was the -- I'm sorry,  
24 the asbestos trust case against the tobacco

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1 companies.  
2 I don't think I've testified in  
3 any cases or given depositions in any cases  
4 at the request of Motley Rice. It's possible  
5 that there was an asbestos case.  
6 Q. Have you been retained by the  
7 past -- excuse me, in the past for litigation  
8 services by the law firm of Spangenberg,  
9 Sibley & Lancione?  
10 A. Not that I can recall.  
11 Q. Have you been retained in the  
12 past for litigation services as an expert by  
13 Skikos Crawford?  
14 A. No.  
15 Q. Have you been retained in the  
16 past for litigation services by the law firm  
17 Mitchell Rafferty & Proctor?  
18 A. Not that I can remember.  
19 Q. Have you --  
20 A. Let me just frame this a little  
21 bit, but it's come to my attention over time  
22 that law firms have listed me in a case  
23 without my knowledge or permission. So it's  
24 possible that that may have happened, but I

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1 don't know whether it happened or not.  
2 I know there are -- I know of  
3 some instances where that's happened, but I  
4 was never contacted by any of those firms to  
5 work on any cases. Whether they listed me on  
6 cases without any knowledge or consent, I  
7 don't know.  
8 Q. Do you recall specifically what  
9 law firm listed you without your permission  
10 in their case?  
11 A. There are many. But one of  
12 them is Farano. Farano, I think, listed me  
13 in 15,000 cases, as I recall, without my  
14 knowledge or consent.  
15 Q. Are there any other instances  
16 of where you were listed as an expert without  
17 your knowledge and consent other than the  
18 Farano case that you can remember?  
19 A. There are others. I can't  
20 remember all of them.  
21 Q. Do you have any understanding  
22 why you were listed as an expert without your  
23 consent in those cases?  
24 A. I assume they thought adding my



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1 name to the list of witnesses would add value  
2 to the case for them.  
3 But I don't know that. In some  
4 way, shape, or form, they saw some advantage  
5 to listing me as a witness.  
6 Q. Have you ever been compensated  
7 by a plaintiff's law firm for being listed as  
8 an expert in any of those cases?  
9 MS. CONROY: Objection.  
10 THE WITNESS: Which cases are  
11 you talking? The Farano cases?  
12 Q. (BY MR. DONOHUE) Yes, the  
13 Farano cases or other cases where you were  
14 listed without your permission or consent.  
15 Have you ever been compensated by those  
16 plaintiffs' law firms for that act?  
17 A. No.  
18 Q. In the past have you been  
19 retained as an expert for litigation services  
20 by the Napoli Shkolnik firm?  
21 A. No.  
22 Q. So with respect to this  
23 engagement that we're here for today, how  
24 many hours have you personally spent?

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1 A. 384.  
2 Q. And what is the hourly rate  
3 that you're charging for your services in  
4 this litigation?  
5 A. For deposition? \$650 an hour.  
6 For everything else, it's \$600  
7 an hour.  
8 (Thomas J. McGarrigle from  
9 Reed Smith for AmerisourceBergen  
10 joined.)  
11 Q. (BY MR. DONOHUE) Have you had  
12 others assisting you in this engagement?  
13 A. Yes.  
14 Q. Who have you had assist you in  
15 the engagement?  
16 A. I have three or four staff, and  
17 I hired some students to do -- to assist.  
18 Q. And could you tell us who are  
19 the staff that have assisted you in the  
20 engagement?  
21 A. Sure. Donna Barbarita.  
22 Q. Could you spell the last name  
23 for the court reporter, please?  
24 A. B-A-R-B-A-R-I-T-A.

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1 Samson Egilman.  
2 Joan Steffen, S-T-E-F-F-E-N.  
3 Muna Yiman, Y-I-M-A-N.  
4 Q. Can you do the first name,  
5 spell it, please?  
6 A. M-U-N-A.  
7 Kevin Reardon.  
8 And Alexis Biccirilo. And I  
9 cannot spell her last name.  
10 But I could get it to you at a  
11 break, probably.  
12 Q. Okay. So the list of six  
13 people --  
14 A. Oh, and one more.  
15 Q. I'm sorry.  
16 A. Triet Tran. T-R-I-E-T, Tran.  
17 T-R-A-N.  
18 Q. So the seven people that you  
19 just listed, does that include both staff and  
20 students?  
21 A. No, that's staff.  
22 Q. All right. Could you please  
23 list out students that have assisted you in  
24 the engagement?

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1 A. Sure. Emma McMillan, Emma  
2 Cavanish, Max Kozlow, Dan Cho. Lindsay,  
3 whose last name I can't remember, but I can  
4 get you that at a break.  
5 And Mark Hocevar,  
6 H-O-E-V-E-N-E-R. (sic)  
7 Q. And I apologize, the first two  
8 students that you listed, they were both  
9 Emmas?  
10 A. They are both Emmas.  
11 Q. So Emma --  
12 A. It does get confusing.  
13 Q. So with Emma No. 1, what's her  
14 last name again?  
15 A. I don't know which order I gave  
16 them to you, but one is named McMillan and  
17 one is named Cavanish. Last name.  
18 Q. Now, with respect to the seven  
19 staff members that you listed, are those  
20 staff that you employ?  
21 A. Yes.  
22 Q. What is Donna Barbarita's  
23 position?  
24 A. Office manager.

<p style="text-align: right;">Page 34</p> <p>1 Q. And how did Ms. Barbarita  2 assist you in the engagement?  3 A. She did copying. Organizing of  4 documents.  5 She may have helped search for  6 some texts. She did scanning of documents.  7 That would be, I think, most of  8 the things that she did.  9 Q. And with respect to Samson  10 Egilman, is that a relation of yours?  11 A. It is.  12 Q. And what relation?  13 A. He is my son.  14 Q. And what did your son do to  15 assist you with respect to this engagement?  16 A. Well, he did some of the same  17 things. He also did some searching on  18 relativity for documents.  19 Helped organize documents. He  20 did searches for some medical literature, I  21 think.  22 Q. And what is your son's title?  23 A. Researcher.  24 Q. And then with respect to</p>	<p style="text-align: right;">Page 36</p> <p>1 library, get articles.  2 Q. Okay. With respect to  3 Kevin Reardon, what's his title?  4 A. Researcher.  5 Q. And what was his role in  6 assisting you with the engagement?  7 A. Same thing. To do searches of  8 the database, organize documents. He, I  9 think, reviewed some depositions as well.  10 Certainly he -- he read my deposition.  11 And those are the tasks that he  12 did. They all pretty much do the same thing.  13 Q. Okay. Alexis Biccirilo?  14 A. Yes.  15 Q. What's her title?  16 A. Researcher.  17 Q. And same tasks as you listed  18 before?  19 A. Yes.  20 Q. And Triet Tran? Is she also a  21 researcher?  22 A. It's a he, and, yes.  23 Q. I apologize.  24 A. No problem.</p>
<p style="text-align: right;">Page 35</p> <p>1 Joan Steffen -- do I have that right?  2 A. You do.  3 Q. What's Ms. Steffen's title?  4 A. Researcher.  5 Q. And how did Ms. Steffen assist  6 you in this engagement?  7 A. Similarly. Did searches of the  8 database. Or helped organize -- she helped  9 organize the report.  10 They all did similar things.  11 So -- but that's what she did. She didn't  12 work that much on this case. She did some  13 work.  14 Q. And with respect to Muna Yiman?  15 A. Yiman.  16 Q. Yiman. I apologize.  17 A. No problem.  18 Q. What's her role?  19 A. Same as Joan's. She did some  20 searches, some organizing of documents, some  21 preparation, preparation of the organization  22 that you see in the room. Sometimes I think  23 she -- sometimes I wanted books ordered and  24 she might order the books. Go to the</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Same task as you've listed  2 before for the other research?  3 A. Essentially. They pretty much  4 all do the same thing.  5 Q. Are all of the staff that you  6 just listed, those seven people, full-time  7 employees?  8 A. Yes.  9 Q. And with respect to their work  10 for you, as your staff, do they only assist  11 in litigation services? Or do they do other  12 work for you?  13 A. They do other work for me.  14 Q. Okay. What are some of the  15 other things they do if they're not assisting  16 you with your expert work in litigation?  17 A. They do work on other  18 consulting work for companies, and they also  19 work on writing papers. Which may not lead  20 to litigation, so they do research on --  21 academic research on various issues.  22 They also help with the  23 non-profit that I run called Global Health  24 Education Training Service.</p>

<p style="text-align: right;">Page 38</p> <p>1 So we also have certain public  2 education efforts, and they do that.  3 So, for example, they're --  4 we've been recent -- I met with the FDA on  5 talc issues, and they helped organize the  6 materials for that presentation.  7 They met with Congress people  8 with respect to talc issues on two occasions.  9 Third occasion coming up, so two.  10 We prepared materials for the  11 congressional subcommittee.  12 We provide information to --  13 they help -- they help -- they all teach my  14 course, or help teach my course at Brown. So  15 they TA the course. Help prepare materials  16 for the course.  17 When I give talks, they  18 generally help prepare the materials for the  19 talks, PowerPoints and other things like  20 that.  21 That's most of what they do.  22 Q. How many hours did your staff  23 collectively work on this engagement?  24 A. That, I don't know. I don't</p>	<p style="text-align: right;">Page 40</p> <p>1 Do you prepare monthly bills?  2 A. No. We just keep the  3 cumulative hours and usually every three or  4 four months I send the bill.  5 Q. And how are the cumulative  6 hours kept?  7 A. Well, I keep them rolling on  8 a -- on a phone. So when I do hours, I put  9 the total hours of numbers in the day and  10 change the total.  11 Q. So your staff reports to you on  12 a daily basis the hours they've worked?  13 A. No. That's what I do. I  14 actually don't know how they keep their  15 hours. I think they do something similar.  16 Q. How does your staff report to  17 you the hours that they've worked on this  18 engagement?  19 A. They don't report to me the  20 hours they've worked on the engagement.  21 Q. How do you know how much to  22 bill your staff out for this occasion?  23 A. They report to Donna Barbarita,  24 and she generates the bill.</p>
<p style="text-align: right;">Page 39</p> <p>1 have that number.  2 Q. Can you estimate?  3 A. No.  4 Q. Would you say that in the last  5 four months that you've been engaged for this  6 litigation, your staff has worked full time  7 on it?  8 A. Oh. My staff usually works  9 more than 40 hours a week. Not always. But  10 my staff has been involved in a variety of  11 issues over this time period, not related to  12 the opioids. So I don't know. It's  13 conceivable that they worked an average of 30  14 or 40 hours for six or eight or ten of those  15 weeks.  16 Some of them were taking  17 vacations and other things, so I -- I really  18 don't know that.  19 Q. Are you billing the hours that  20 your staff works on this engagement --  21 A. Yes.  22 Q. -- to the plaintiffs?  23 A. Yes.  24 Q. And how do you do that billing?</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. And what are you charging with  2 respect to your staff members with respect to  3 this engagement?  4 A. I don't know. Usually 50 to  5 \$70 an hour. I don't know what the billing  6 is really.  7 Q. So that 50 to \$75 an hour would  8 be for the seven people that we've identified  9 as your staff?  10 A. Correct.  11 Q. Did you rely on information  12 from your staff to develop the opinions in  13 your report?  14 A. Sure. The research that they  15 did formed the basis of some of the opinions  16 in my report.  17 Q. How does your staff know what  18 to do? How do you instruct them to assist  19 you in the engagement?  20 A. Well, we meet and discuss the  21 issue generally to start. Different staff  22 people are given different areas to do  23 research on.  24 And then they talk to each</p>

<p style="text-align: right;">Page 42</p> <p>1 other about the iterative searches they've  2 done and the work they've done. And then  3 when I find something, generally I yell at  4 them, out my door, because they're all right  5 outside my door, and I say, "Hey, could  6 somebody go get me this?" Or "Go check  7 that?"</p> <p>8 And so that's -- a lot of the  9 direction comes in that form.</p> <p>10 And they interact with each  11 other as well. Decide amongst themselves  12 what they think are important, sharing  13 documents back and forth. And they try to  14 co-create -- as we go through, we try to  15 create various outlines which go in a --  16 well, like this thing. This 3M thing, we  17 have a sticky thing. It's not a sticky  18 thing, but I have several sticky ones. So we  19 might write different topics up, and people's  20 names get attached to those topics. We do a  21 little research on those things.</p> <p>22 Sometimes -- I may give you an  23 example. For example, I was interested in  24 the anthropology of pain and sociology of</p>	<p style="text-align: right;">Page 44</p> <p>1 instructions by e-mail with respect to  2 engagements?</p> <p>3 A. Sometimes.</p> <p>4 Q. Did you give your staff any  5 instructions to assist in this engagement?</p> <p>6 A. Yes.</p> <p>7 Q. Do you still have those  8 e-mails?</p> <p>9 A. Well, that wasn't done by  10 e-mail.</p> <p>11 Q. Maybe I got confused. Let me  12 ask again.</p> <p>13 As part of this engagement, did  14 you provide instructions to your staff on how  15 to assist you?</p> <p>16 A. From time to time, over the  17 past four months, I'm sure I've sent them  18 e-mails saying "Get me this" or "Get me  19 that." But most of my communications with  20 them is by yelling.</p> <p>21 Q. With respect to the students  22 that you listed, which I think there were six  23 students, are there --</p> <p>24 A. There's a couple of others. We</p>
<p style="text-align: right;">Page 43</p> <p>1 pain. So Alexis was a sociology major. Joan  2 was an anthropology major. So I had Alexis  3 put together -- or go get me sociology on the  4 anthropology of pain and organize that.</p> <p>5 So that's how things happen.</p> <p>6 It's a fairly non-linear organizational  7 management style, I would say.</p> <p>8 Q. Do you provide instructions --  9 written instructions to your staff to assist  10 you in this engagement?</p> <p>11 A. No. I yell at them.</p> <p>12 Q. With respect to the flip charts  13 that you mentioned, where their outlines are  14 created, do you have those as part of your  15 file with respect to this engagement?</p> <p>16 A. I don't think so. Because we  17 generally don't keep them up. I may have one  18 or two.</p> <p>19 Q. But you haven't kept the flip  20 charts as part of your expert file?</p> <p>21 A. No, not as a -- not on a  22 regular basis. We may have one in my office  23 now.</p> <p>24 Q. Do you ever give your staff</p>	<p style="text-align: right;">Page 45</p> <p>1 did some manual work too, but I don't  2 remember their names. I can't spell them.</p> <p>3 Q. Let's talk about the work  4 that's -- the six students that you mentioned  5 did.</p> <p>6 How did the students assist you  7 in this engagement?</p> <p>8 A. Well, differently. They had  9 different -- they more or less had research  10 tasks. So -- because I tried to make the  11 work academic for them in their area of  12 interest.</p> <p>13 So Emma Cavanish had worked at  14 a marketing company, so she helped put  15 together the marketing literature. So I have  16 a lot of marketing literature. One of the  17 things she did was organize all of that  18 marketing literature. And she did some  19 researches -- oh, one of the searches she  20 did, she did -- she came up with a list of  21 sex terms. And she did searches to the  22 database for sex terms. Hookers, tootsies,  23 things like that.</p> <p>24 So she did a specific search</p>

<p style="text-align: right;">Page 46</p> <p>1 for sex terms.</p> <p>2 And so that was one thing she</p> <p>3 did.</p> <p>4 Eva -- Emma McMillan was</p> <p>5 interested in epidemiology, so I worked with</p> <p>6 her to look at the whole issue of the</p> <p>7 pay-for-play, impact in action that generated</p> <p>8 EERW. And that criticism of the EERW that's</p> <p>9 in the report came out of that work.</p> <p>10 Dan Shaw and Mark Hovevar</p> <p>11 worked on deconstructing the Fishbain paper</p> <p>12 from 2008. And that work resulted in the</p> <p>13 poster that's here that they presented at the</p> <p>14 All Ivy conference on Saturday. And so that</p> <p>15 was -- that was their work. So they had to</p> <p>16 do a lot of digging, because a lot of the</p> <p>17 citations in the Fishbain work in 2008 were</p> <p>18 unfindable. Because I don't know if they</p> <p>19 existed or not, but he couldn't find two of</p> <p>20 the 23 papers that he cited as evidence for</p> <p>21 the dictionaries, and then they did the</p> <p>22 reanalysis. So I worked with them on that</p> <p>23 poster presentation.</p> <p>24 And they're working on a paper</p>	<p style="text-align: right;">Page 48</p> <p>1 Max also did some -- we did</p> <p>2 some cross-checking of language. I think you</p> <p>3 saw that probably in your report, where</p> <p>4 duplicate language was taken from Purdue and</p> <p>5 used in marketing materials produced by some</p> <p>6 of the front organizations. So he did some</p> <p>7 searches, looking for where language was</p> <p>8 copied directly from manufacturers that went</p> <p>9 into -- directly into the marketing materials</p> <p>10 by the -- produced by the front</p> <p>11 organizations.</p> <p>12 So he did that.</p> <p>13 There was one other -- there's</p> <p>14 one other poster here that he had a -- that</p> <p>15 was -- that was his find. So, you know.</p> <p>16 So that's pretty much what -- I</p> <p>17 think what Max did.</p> <p>18 What was the last one?</p> <p>19 Q. Before we move to that, Max</p> <p>20 presented at the All Ivy conference?</p> <p>21 A. No. Dan Cho and Mark --</p> <p>22 Dan Cho presented but the</p> <p>23 poster was done by he and Mark Hovevar, who</p> <p>24 are med students at Brown.</p>
<p style="text-align: right;">Page 47</p> <p>1 now they were -- draft paper they're working</p> <p>2 on that will also be submitted along with --</p> <p>3 after the -- sometime now.</p> <p>4 So -- was that what you wanted</p> <p>5 to know? Think there was something I left</p> <p>6 out.</p> <p>7 Q. Did you get Max and Lindsay?</p> <p>8 A. Oh, yeah. Max. Max -- Max</p> <p>9 deconstructed the complaint and went through</p> <p>10 the complaint. Tried to make sure we had all</p> <p>11 the documents that were cited on the</p> <p>12 complaint. Tried to organize them by themes.</p> <p>13 As you know, I -- the</p> <p>14 complaints had about nine or ten, for want of</p> <p>15 a better word, bad acts, which I condensed</p> <p>16 into basically two in my analysis of what was</p> <p>17 going on.</p> <p>18 And so he went through the</p> <p>19 complaint and tried to place those bad -- the</p> <p>20 way the plaintiffs had done it. And we also</p> <p>21 did the Massachusetts complaint, in</p> <p>22 reorganizing in that portion in the way that</p> <p>23 I conceived of the -- of the cause of the</p> <p>24 opioid epidemic.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. And what was the nature of the</p> <p>2 presentation at the All Ivy conference?</p> <p>3 A. I'll get it for you.</p> <p>4 I should have -- we have a</p> <p>5 poster on that. So it should be here.</p> <p>6 Oh, here it is. Yeah, here it</p> <p>7 is.</p> <p>8 So this is the poster that he</p> <p>9 did.</p> <p>10 So this is the -- this is the</p> <p>11 poster that he just presented. So it starts</p> <p>12 with a historical description of the hockey</p> <p>13 stick and the epidemic. And -- can I -- ties</p> <p>14 the epidemic for addiction. And these are</p> <p>15 the specific -- this is taken from a</p> <p>16 published paper.</p> <p>17 So this ties to the rise of the</p> <p>18 epidemic for specific marketing acts done by</p> <p>19 the manufacturers.</p> <p>20 This is the reconstruction of</p> <p>21 the Fishbain paper. Fishbain took 23 papers</p> <p>22 of which -- they're not really papers. He</p> <p>23 took 23 things, two of which we could never</p> <p>24 find, including communicating within him. We</p>



<p style="text-align: right;">Page 50</p> <p>1 couldn't find him, I think.  2 And so this is a breakdown of  3 those papers. And how many patients came  4 from each of those papers.  5 And this is a -- the -- you can  6 see the one study from Fishbain, the  7 Milligan, Passik, and Taub paper, provides  8 56 percent of the total participants and had  9 a very low addiction rate. But there was  10 another study that was also large and had a  11 stream of zero.  12 So what we did was we tried to  13 use a standard definition for addiction,  14 because the -- where the papers had not  15 really looked for addiction, we threw them  16 out. So an addiction rate, the reason one  17 had an addiction rate of zero was because it  18 didn't really look for addiction.  19 So when you take the -- this is  20 the Fishbain, original Fishbain results.  21 Original Fishbain results has 2,102 patients,  22 97 percent of which are not addicted.  23 Three percent are addicted, and that's where  24 he came up with the 3.87.</p>	<p style="text-align: right;">Page 52</p> <p>1 database with our documents were his reports  2 for Purdue during the time period that he was  3 preparing and publishing this paper. And  4 some of those were cited in federal cases.  5 So we cited those federal cases as evidence  6 that he had misrepresented his  7 non-association with the pharmaceutical  8 companies in the end of this -- in the end  9 here. Okay?  10 But we had more information on  11 his associations with the pharmaceutical  12 manufacturers which we didn't include because  13 it was confidential.  14 It's like we did rely on it in  15 a sense because it supported the construct  16 that he had misrepresented the nature of his  17 relationship with the manufacturers, as in  18 not mentioning it.  19 Q. How many --  20 A. Oh, I think one other thing. I  21 think the students -- before we got the  22 cases, the students e-mailed Fishbain and  23 asked him if during this time period he  24 published this, he had any conflicts of</p>
<p style="text-align: right;">Page 51</p> <p>1 But if you look at studies --  2 if you look at the -- if you throw out the  3 studies that you either can't find or --  4 because they either may or may not exist, or  5 you look at the studies where they actually  6 look for addiction, you get a different rate.  7 And that -- that gives you about 750  8 patients, of which 33 percent are addicted.  9 So that's the gist.  10 Q. Thank you for that.  11 Did Mr. Cho and Mr. Hocevar  12 rely on any information that they reviewed as  13 part of this engagement to make that  14 presentation?  15 A. They didn't rely on it, because  16 it's confidential. They couldn't put it in.  17 But they reviewed.  18 Now, there are things in here  19 that -- for example, Fishbain didn't disclose  20 his associations with the litigation and  21 Purdue in particular in the published paper.  22 But what we did get --  23 Now, I probably had this in  24 2006, but at any rate, in relative -- in the</p>	<p style="text-align: right;">Page 53</p> <p>1 interest. And he wrote an e-mail back saying  2 no, amongst other things.  3 The other things where he  4 criticized him -- the general anticorporate  5 construct in the -- and cynical views of the  6 medical and scientific views toward  7 corporations.  8 Q. And do you have that e-mail  9 still?  10 A. I don't know if I have it, but  11 Dan probably has it.  12 Q. As part of this engagement,  13 have you kept copies of the e-mails that  14 either the students or staff have sent and  15 received?  16 A. No, I don't keep any e-mails.  17 You know Jones Day is in the  18 room, right?  19 MR. DONOHUE: I'll move to  20 strike as nonresponsive.  21 Q. (BY MR. DONOHUE) A number of  22 the students that you have had assisting you  23 in the -- in this engagement, how many hours  24 would you estimate that they have worked in</p>

<p style="text-align: right;">Page 54</p> <p>1 the last four months?</p> <p>2 A. I don't know. Not much,</p> <p>3 because they mostly worked in January during</p> <p>4 inter-session. But unfortunately, they</p> <p>5 actually have to go to school. Now, Brown is</p> <p>6 pretty easy, okay? But they still have to</p> <p>7 show up for class and do some work. So they</p> <p>8 haven't done that much in the last couple of</p> <p>9 months.</p> <p>10 Q. And these are all students from</p> <p>11 Brown?</p> <p>12 A. They're all Brown students.</p> <p>13 Q. Are the students compensated</p> <p>14 for the work that they have done to assist</p> <p>15 you on the engagement?</p> <p>16 A. For some. They didn't get paid</p> <p>17 to do the academic work, so.</p> <p>18 But some of this research they</p> <p>19 did was for me in preparation for the report.</p> <p>20 So I paid them for that, but I didn't pay</p> <p>21 them for doing the poster or for writing up</p> <p>22 the papers. That's their own.</p> <p>23 Q. So what do you pay the students</p> <p>24 for with respect to this engagement?</p>	<p style="text-align: right;">Page 56</p> <p>1 A. I do.</p> <p>2 Q. What's the hourly rate?</p> <p>3 A. \$20 an hour.</p> <p>4 Q. How much have you been paid to</p> <p>5 date for this engagement?</p> <p>6 A. Nothing.</p> <p>7 Well maybe I got a \$10,000</p> <p>8 retainer, but that's it.</p> <p>9 Q. Have you sent any bills to the</p> <p>10 plaintiffs for your work on this engagement?</p> <p>11 A. Just the retainer bill.</p> <p>12 Q. How much are you currently owed</p> <p>13 for the engagement?</p> <p>14 A. 384 hours times \$600.</p> <p>15 Q. What about the hours that your</p> <p>16 staff has worked on the engagement?</p> <p>17 A. I don't have that number.</p> <p>18 Q. But you'll be asking for</p> <p>19 compensation with respect to the</p> <p>20 reimbursement for the hours that your staff</p> <p>21 has worked; right?</p> <p>22 A. Yes.</p> <p>23 Q. Can you estimate for us what</p> <p>24 that would be?</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Well, I pay them while they're</p> <p>2 doing research for me related to the</p> <p>3 litigation. I don't pay them for work</p> <p>4 related to generating medical publications or</p> <p>5 scientific publications. It's in the</p> <p>6 disclosure here, so ...</p> <p>7 It says "DKC and MH worked as</p> <p>8 paid student researchers for the -- at the</p> <p>9 request of plaintiffs in opioid litigation.</p> <p>10 DKC and MH were not compensated by law firms</p> <p>11 for work on the paper. The lawyers for the</p> <p>12 plaintiffs did not review the paper and had</p> <p>13 no input into the content of the paper.</p> <p>14 Dr. Egilman serves as an expert witness at</p> <p>15 the request of cities and counties suing</p> <p>16 opioid manufacturers and distributors for</p> <p>17 money to help pay for the financial costs of</p> <p>18 the opioid epidemic."</p> <p>19 The reason I'm in here is I'm</p> <p>20 not an author of this, but they did</p> <p>21 acknowledge me as helping them prepare the</p> <p>22 work.</p> <p>23 Q. Do you pay the students with an</p> <p>24 hourly rate?</p>	<p style="text-align: right;">Page 57</p> <p>1 A. No.</p> <p>2 Q. Is it more than 384 hours?</p> <p>3 A. I don't know.</p> <p>4 Q. No idea?</p> <p>5 A. I do not have any idea whether</p> <p>6 it is more or less than 384 hours.</p> <p>7 Q. Do you have any idea of what</p> <p>8 ballpark of the hours is that your staff has</p> <p>9 worked?</p> <p>10 A. I do not. It's probably</p> <p>11 several hundred hours, I would say. It's not</p> <p>12 ten minutes, but I don't know how many hours.</p> <p>13 And I may be off. It may not be several</p> <p>14 hundred hours.</p> <p>15 Q. When it comes time to submit a</p> <p>16 bill for the hours that your staff has paid,</p> <p>17 how are you going to figure that out?</p> <p>18 A. They keep track of their hours.</p> <p>19 The hours go to Donna Barbarita. Donna</p> <p>20 Barbarita will send a bill.</p> <p>21 Q. So you believe Donna Barbarita</p> <p>22 currently has information about the number of</p> <p>23 hours your staff has worked on this</p> <p>24 engagement?</p>

<p style="text-align: right;">Page 58</p> <p>1 A. I don't think so.</p> <p>2 MS. CONROY: Objection.</p> <p>3 THE WITNESS: I don't know if</p> <p>4 they've given her --</p> <p>5 I don't think they've given her</p> <p>6 the hours. So they each have their</p> <p>7 own hours.</p> <p>8 Q. (BY MR. DONOHUE) And what</p> <p>9 would you estimate the number of hours that</p> <p>10 your students have worked on this engagement?</p> <p>11 A. Same thing. I don't have a</p> <p>12 good idea about that. But mostly -- I mean,</p> <p>13 they work -- they work, you know, around 15</p> <p>14 to 30 hours for three or four weeks in</p> <p>15 January, and then after that, you know, five</p> <p>16 to 15 hours, maybe -- I doubt it -- in the</p> <p>17 next couple of months.</p> <p>18 Q. How much of your income last</p> <p>19 year was from expert work in the litigation?</p> <p>20 A. Probably half.</p> <p>21 Q. What were your other sources of</p> <p>22 income for last year?</p> <p>23 A. Consulting for companies.</p> <p>24 Q. Is that non-litigation</p>	<p style="text-align: right;">Page 60</p> <p>1 teaching the next spring.</p> <p>2 Q. Are you still practicing</p> <p>3 medicine?</p> <p>4 A. I still have a license to</p> <p>5 practice, and I still occasionally see</p> <p>6 patients.</p> <p>7 Q. How many patients would you say</p> <p>8 you now see?</p> <p>9 A. Well, when I'm doing -- I</p> <p>10 probably see 10 or 15 consulting patients a</p> <p>11 year and maybe one or two regular patients</p> <p>12 who call me up or something I've seen them</p> <p>13 before for.</p> <p>14 Q. Do you have an office where you</p> <p>15 practice medicine?</p> <p>16 A. I do.</p> <p>17 Q. Is it the same office you use</p> <p>18 for your expert litigation? Or different?</p> <p>19 A. It's a slightly different</p> <p>20 suite.</p> <p>21 I have -- in my office I have</p> <p>22 about eight rooms. In one of the rooms I</p> <p>23 have a medical setup.</p> <p>24 Q. Speaking of the protective</p>
<p style="text-align: right;">Page 59</p> <p>1 consulting?</p> <p>2 A. It's confidential consulting.</p> <p>3 Q. Any other sources of income for</p> <p>4 last year?</p> <p>5 A. Sure.</p> <p>6 Q. What else?</p> <p>7 A. Investments.</p> <p>8 That's about it.</p> <p>9 Q. Does Brown pay you anything?</p> <p>10 A. A library card. Discount on</p> <p>11 that.</p> <p>12 The library card is probably</p> <p>13 worth about \$50,000 to me, just to give you a</p> <p>14 number.</p> <p>15 The year before I got free</p> <p>16 parking, when I was teaching a course. They</p> <p>17 paid for the parking.</p> <p>18 Q. Are you currently teaching any</p> <p>19 courses at Brown?</p> <p>20 A. Not this semester.</p> <p>21 Q. Do you plan on teaching next</p> <p>22 semester?</p> <p>23 A. I do. Well, no. I plan on</p> <p>24 teaching -- because of this case, I plan on</p>	<p style="text-align: right;">Page 61</p> <p>1 order, were you provided the protective order</p> <p>2 in this case?</p> <p>3 A. Yes.</p> <p>4 Q. Did you review it?</p> <p>5 A. Yes.</p> <p>6 Q. And did you sign it?</p> <p>7 A. Yes.</p> <p>8 Q. And did you agree to be bound</p> <p>9 by it?</p> <p>10 A. Yes.</p> <p>11 Q. What about the staff that</p> <p>12 you've listed as helping you on the case?</p> <p>13 Did -- were they provided the</p> <p>14 protective order?</p> <p>15 A. Yes.</p> <p>16 Q. Did they sign it?</p> <p>17 A. Yes.</p> <p>18 Q. Did they agree to be bound by</p> <p>19 it?</p> <p>20 A. Yes.</p> <p>21 Q. And the students that you</p> <p>22 mentioned, the six students, did it -- were</p> <p>23 they provided the protective order?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. Did they sign it?</p> <p>2 A. Yes.</p> <p>3 Q. And they agreed to be bound by</p> <p>4 it?</p> <p>5 A. Yes.</p> <p>6 Q. Do you have a copy of those</p> <p>7 signed protective orders?</p> <p>8 A. Someplace.</p> <p>9 Q. Okay.</p> <p>10 A. Not on me.</p> <p>11 I think they were all sent to</p> <p>12 the plaintiff. I'm not completely sure that</p> <p>13 I kept copies. The lawyers have copies.</p> <p>14 Q. We'll follow up on that</p> <p>15 separately.</p> <p>16 Have you in the past violated</p> <p>17 court orders?</p> <p>18 MS. CONROY: Objection.</p> <p>19 THE WITNESS: I need to look at</p> <p>20 that settlement agreement to answer</p> <p>21 that question. I'm sure that -- I</p> <p>22 don't recall the language exactly.</p> <p>23 Q. (BY MR. DONOHUE) What</p> <p>24 settlement agreement are you referring to?</p>	<p style="text-align: right;">Page 64</p> <p>1 recollection when you go back to your office?</p> <p>2 A. If I went back to my office, I</p> <p>3 could find the document and I could refresh</p> <p>4 my recollection.</p> <p>5 Q. And what is it that you need to</p> <p>6 refresh your recollection about with respect</p> <p>7 to the settlement agreement before answering?</p> <p>8 A. Well, that was a finely crafted</p> <p>9 document. And I need to recall exactly what</p> <p>10 was in it. And I can't recall exactly what</p> <p>11 was in it. It's been 9 -- 12 years. So</p> <p>12 before I answer questions about that, I want</p> <p>13 to refresh my recollection of what actually</p> <p>14 was signed and what happened.</p> <p>15 Q. All right. Are there any other</p> <p>16 instances you recall where you have violated</p> <p>17 a Court's order?</p> <p>18 A. No.</p> <p>19 Q. Do you recall the Ballinger v.</p> <p>20 Brush Wellman, Incorporated case?</p> <p>21 A. Correct.</p> <p>22 Q. Do you recall posting materials</p> <p>23 in violation of the Court's order in that</p> <p>24 case?</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Between me and Lilly.</p> <p>2 Q. I'm sorry, I didn't hear you.</p> <p>3 Between --</p> <p>4 A. Between me and Lilly.</p> <p>5 Q. What case was that?</p> <p>6 A. Zyprexa.</p> <p>7 Q. In the Zyprexa litigation, do</p> <p>8 you recall whether the Court in that case</p> <p>9 found that you had violated the Court's</p> <p>10 protective order?</p> <p>11 A. That's in dicta in a case in a</p> <p>12 ruling on the TRO that I wasn't at, yes.</p> <p>13 Something like that.</p> <p>14 Q. Did you violate the Court's</p> <p>15 protective order in the Zyprexa case?</p> <p>16 A. I need to look at the language</p> <p>17 that I wrote in the Lilly settlement before I</p> <p>18 answer that question. I need to refresh my</p> <p>19 recollection.</p> <p>20 Q. Where is that settlement?</p> <p>21 A. Where is that settlement? It's</p> <p>22 in my office.</p> <p>23 Q. So you have access to it?</p> <p>24 You can refresh your</p>	<p style="text-align: right;">Page 65</p> <p>1 A. That's not what happened.</p> <p>2 Q. What did happen?</p> <p>3 A. Jones Day hacked my computer,</p> <p>4 downloaded materials from my computer,</p> <p>5 illegally, then -- pardon me. Keller and</p> <p>6 Heckman in Washington, representing the</p> <p>7 Society for the Plastic Industries, hacked my</p> <p>8 computer in a case -- in the Staples case,</p> <p>9 the vinyl chloride case in Texas. They then</p> <p>10 shared the password with Kelly Stewart at</p> <p>11 Jones Day. Kelly Stewart of Jones Day then</p> <p>12 hacked my computer, downloaded materials that</p> <p>13 were not publicly available because my</p> <p>14 computer was password-protected.</p> <p>15 Went to the judge, told the</p> <p>16 judge I had violated a gag order. He lied to</p> <p>17 the judge. And the judge believed him.</p> <p>18 Okay? The judge issued a sanction. The</p> <p>19 sanction was more or less reversed by the</p> <p>20 Colorado Appellate Court, cert. denied to the</p> <p>21 Supreme Court of Colorado.</p> <p>22 I filed a lawsuit against</p> <p>23 Keller and Heckman, and it was thrown out on</p> <p>24 the law. It's the lead case in the</p>

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1 Millennium hacking statute. It's Egilman  
2 versus Keller and Heckman.  
3 I then filed a bar complaint  
4 against Kelly Stewart in Dallas. Kelly  
5 Stewart, at the bar complaint, admitted that  
6 he had illegally hacked my computer, a  
7 federal felony, 10 years in jail and a  
8 \$50,000 fine, on videotape. No written  
9 record.  
10 The bar in Dallas issued a  
11 written sanction to him, which was not to be  
12 publicly disclosed, for counseling, and found  
13 that -- I think the language was that my  
14 complaint had merit. The vote was 4 to 1.  
15 So that's what happened in that  
16 case.  
17 Q. When is the first time that you  
18 gave expert testimony in support of  
19 litigation? Do you recall your first case?  
20 A. Yeah, my first case is Time  
21 versus OCF. It's a Third Circuit case.  
22 Q. What year was that?  
23 A. Third Circuit decision, I think  
24 it was '87 or '88. The case was, I think, in

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1 '86.  
2 Q. Do you recall the area that you  
3 were giving expert testimony on --  
4 A. Yes.  
5 Q. -- in that case?  
6 What was it?  
7 A. Well, it was the supervisor at  
8 the Hess oil refinery in St. Croix who had  
9 been exposed to asbestos and developed  
10 pleural plaques.  
11 He sued Owens Corning and a  
12 variety of other asbestos product  
13 manufacturers for injuries related for the  
14 pleural disease that he got as a result of  
15 the exposure.  
16 I testified -- there were two  
17 trials. There's -- in the first trial, the  
18 first trial only went to -- week and a half,  
19 and the judge got sick and unfortunately  
20 passed away.  
21 I hope that doesn't happen to  
22 anybody in this case.  
23 And then he -- there was a  
24 second trial, and in the second trial I

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1 testified on state of the art warnings, risk  
2 communication, asbestos medicine, and a  
3 variety of other issues.  
4 Q. How many times in your career  
5 have you been retained as an expert witness?  
6 A. I don't know about career, but  
7 I've been retained as an expert witness in  
8 probably over 4 or 500 cases.  
9 Q. And of the 4 or 500 cases that  
10 you've been retained as an expert witness,  
11 how many of those would you estimate have  
12 been as a testifying expert?  
13 MS. CONROY: Object to the  
14 form.  
15 THE WITNESS: Well, the ones I  
16 gave you, that's the ones based on  
17 testifying.  
18 Q. (BY MR. DONOHUE) Okay. Would  
19 you add to that number if we included  
20 retentions as a consulting expert?  
21 A. I've done other consulting  
22 expert work, yes.  
23 Q. How many cases would you  
24 estimate you'd been retained as a consulting

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1 expert?  
2 A. That, I don't know.  
3 Q. Would it be about the same  
4 number or less?  
5 A. I do not know.  
6 For example, I might be  
7 consulting with someone and I don't know how  
8 many cases there are. Somebody might be  
9 sued -- a corporation might be sued for  
10 thousands of cases. My consulting might  
11 relate to the general issues relating to  
12 thousands of cases. I don't know the answer  
13 to that question.  
14 Q. I'm not asking about the number  
15 of cases. I'm asking about the number of  
16 times you've been retained as a consulting  
17 expert.  
18 A. Well, okay. I don't know. I  
19 don't know that either.  
20 Q. Can we go to your expert  
21 report? We've marked one of the copies 1F.  
22 Would you like a copy of that? It's got a  
23 spiral binding so it's easy to flip through.  
24 A. Sure.



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1 Q. And would you mind turning to  
2 page 139 of your expert report.  
3 A. Okay.  
4 Q. Okay. Page 139 is entitled  
5 "Prior Expert Testimony." Is this a complete  
6 list of the depositions and trial testimony  
7 you've given since 2015?  
8 A. As well as I could put it  
9 together.  
10 Q. Do you recall testifying in  
11 July of 2015 in a case captioned Montgomery  
12 v. Home Depot? It was in the Southern  
13 District of California.  
14 A. No, I don't believe I testified  
15 in that case.  
16 Q. Okay. Looking at page 139 --  
17 A. What year was that case?  
18 Q. 2015.  
19 A. I don't recall.  
20 Q. Well, if it -- if you do have a  
21 memory of it, we could add it into the list,  
22 but.  
23 A. I don't have a memory of it. I  
24 can go look.

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1 Q. Turning your attention to  
2 page 139 of your expert report.  
3 In each of these listed cases,  
4 have you testified on behalf of the  
5 plaintiffs?  
6 A. No.  
7 Q. So --  
8 A. I don't testify on behalf of  
9 anybody.  
10 Q. Let me rephrase the question.  
11 With respect to the cases  
12 listed on page 139 of your report, were you  
13 retained by the plaintiffs in each and every  
14 one of those cases?  
15 A. I believe so.  
16 Q. You previously testified that  
17 you'd estimate you've been retained 4 to 500  
18 times as an expert; do you remember that?  
19 A. Yes.  
20 Q. Out of the 4 to 500 times  
21 you've been retained as an expert, in each of  
22 those cases have you been retained by the  
23 plaintiff?  
24 A. No.

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1 Q. How many times have you been  
2 retained by the defendant in those 4 to 500  
3 cases?  
4 A. Probably 150. 200.  
5 Q. When is the last time you  
6 recall being retained by a defendant as an  
7 expert in litigation services?  
8 A. Yesterday or the day before.  
9 Q. What case is that?  
10 A. I don't remember the case.  
11 It's a Viking Pump case. I don't know the  
12 name.  
13 Q. A Viking Pump?  
14 A. Viking Pump.  
15 Q. And putting aside your  
16 retention yesterday, when is the last time  
17 you recall being retained by a defendant as  
18 an expert?  
19 A. The week before.  
20 Q. In the last four to five years,  
21 have you testified on behalf of a defendant?  
22 A. I don't testify on behalf of  
23 defendants or plaintiffs.  
24 Q. Have you testified in any case

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1 in the past four years where you were  
2 retained by a defendant?  
3 A. No, because it would be here.  
4 But I have in the past.  
5 Q. So when is the last time you  
6 recall testifying as an expert when you've  
7 been retained by a defendant?  
8 A. Probably about five --  
9 actually, no, there's -- there must be a case  
10 missing because I think two years ago, I gave  
11 a deposition at the request of a plaintiff in  
12 a defense case, so there's one case specific.  
13 So that's probably about two years ago.  
14 Q. So your answer said you gave a  
15 deposition at the request of a plaintiff in a  
16 defense case?  
17 A. Well, I was working for  
18 Viking Pump, the defendant. I was deposed by  
19 the plaintiff.  
20 Q. Got it. You mentioned the  
21 Viking Pump cases. Do you recall any other  
22 defendants that have retained you as an  
23 expert?  
24 A. Yes.

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1 Q. What other defendants?  
2 A. Well, the ones that I mentioned  
3 when I first met Ms. Conroy. She retained me  
4 at the request of Federal-Mogul. Turner &  
5 Newall was the underlying company, but  
6 Federal-Mogul, I think was the owner. So  
7 those three cases were Federal-Mogul cases.  
8 Then I've done -- I did an A.E.  
9 Smith boiler case.  
10 I did a variety of workers'  
11 compensation cases when I was running the  
12 clinic in Braintree.  
13 I did a lead case when I was  
14 running the clinic in Braintree.  
15 I did some other -- I think  
16 it's one or two other boiler manufacturer  
17 cases. I'm sorry, pump manufacturer cases.  
18 That's what I can remember.  
19 Q. So your testimony is that out  
20 of the 4 to 500 cases where you've been  
21 retained, approximately 150 to 200 of those  
22 you were retained by the defendant to be an  
23 expert?  
24 A. Think you're -- the 4 to 500

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1 are cases I gave testimony in. Okay? The  
2 100 to 150, or whatever I gave for a number  
3 for the defense cases, the cases I've been  
4 retained in, in most of those cases, aside  
5 from two or three of those cases, maybe four  
6 of them, maybe five, I did not give testimony  
7 in those cases. Those cases settled. But I  
8 was retained and gave reports in all those  
9 cases.  
10 Q. Okay. So let me go back.  
11 Out of the 4 to 500 cases where  
12 you have testified as an expert, how many of  
13 those cases have you testified when you've  
14 been retained by a defendant?  
15 A. Probably 10 or so.  
16 Well, no, wait. I gave you  
17 some others. So maybe 10 to 15.  
18 Q. And you mentioned that you  
19 believe, putting aside whether you testified  
20 as an expert or not, "I've been retained by  
21 defendants in 150 to 200 cases"; do I have  
22 that right?  
23 A. Correct. Or more. I currently  
24 have about 50 or 60 cases for Viking Pump.

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1 And I've been working for them for five or  
2 six years, and probably that's my average  
3 caseload for them over that time period. So  
4 I may have underestimated the total number of  
5 Viking Pump cases that I've done, I've been  
6 retained over the last four or five years,  
7 but that's my best estimate.  
8 Q. So how many cases have you been  
9 retained as an expert by plaintiffs?  
10 A. That, I don't know. Mostly --  
11 mostly the plaintiff cases I'm retained in, I  
12 give depositions and they go to trial. Not  
13 all. I'd say the overwhelming majority go to  
14 trial, so most of that number went to trial.  
15 I mean, that's just the way it  
16 is.  
17 Q. With respect to your retention  
18 in this engagement, how many cases have you  
19 been retained as an expert by the plaintiff?  
20 In other words, how do you  
21 count up the number of cases for this  
22 engagement since you testified that you have  
23 been engaged in the MDL?  
24 A. Again, I do not know what that

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1 question means.  
2 Q. In your past as a testifying  
3 expert, has any court excluded your proposed  
4 expert testimony?  
5 A. Yes.  
6 Q. How many times has a court  
7 excluded your testimony as an expert witness?  
8 A. Once.  
9 Q. And what case was that?  
10 A. That's the popcorn case in  
11 Spokane.  
12 Q. Any other time?  
13 A. No.  
14 Q. Have you ever withdrawn as an  
15 expert in litigation after you've been  
16 retained?  
17 A. I'm not sure I understand that  
18 question.  
19 Q. In any of the 4 to 500 cases --  
20 no, strike that.  
21 In any of the cases where  
22 you've been retained as an expert, have you  
23 withdrawn from those cases prior to  
24 testifying as an expert?

<p style="text-align: right;">Page 78</p> <p>1 A. Not that I can recall.  2 I mean, I've not -- in cases  3 that I've been retained and given testimony  4 at a deposition, I've not always testified.  5 Q. Right. But I'm wondering if  6 you recall ever, after a, for example, a  7 motion to exclude you has been filed, you  8 withdrawing as an expert in that case.  9 A. Do you mean me? Me sending a  10 letter saying I withdraw? Or me telling a  11 lawyer I withdraw?  12 Q. Have you ever --  13 A. Is that what you mean?  14 Q. Well, let's start with that.  15 Do you recall any case --  16 A. That's never happened. That I  17 can recall.  18 Q. Do you recall any case where,  19 after a motion to exclude has been filed  20 against your proposed testimony, where the  21 lawyer that retained you has withdrawn you  22 from the case?  23 A. I don't know.  24 Q. Don't recall?</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. And is that accurate?  2 A. You read that correctly, but it  3 should -- understand that these are opinions  4 that I expect to express at this deposition.  5 I don't think I'm going to give  6 these opinions in court.  7 Q. And why don't you think you're  8 going to give all of the opinions in court?  9 A. Well, for one thing, I think we  10 don't have five years to try the case.  11 That would be the number one  12 reason. I know I wouldn't give all of these  13 opinions.  14 Q. Looking at the opinions in your  15 report, do you know which opinions that you  16 will be testifying at trial about, if  17 allowed?  18 MS. CONROY: Objection.  19 THE WITNESS: I -- as you know,  20 I've done some cases with Mr. Lanier,  21 and he always surprises me.  22 So I don't have a clue.  23 Q. (BY MR. DONOHUE) So, before we  24 go back to that, let's put on the record what</p>
<p style="text-align: right;">Page 79</p> <p>1 A. I don't know.  2 Q. So if we could go to your  3 report again, and what we've marked as  4 Exhibit 1F, which is in front of you. Could  5 you confirm that this looks to be a complete  6 copy of your report? I understand there's  7 not the exhibits, but at least your report?  8 MS. CONROY: Objection.  9 THE WITNESS: How am I going to  10 do that?  11 Q. (BY MR. DONOHUE) Okay. We'll  12 do it a different way. Could you turn to  13 page 141?  14 And this is a page entitled  15 "Signature."  16 Is that your signature?  17 A. It is.  18 Q. And the first sentence states  19 that this is a report -- excuse me. "This  20 report is a statement of opinions I expect to  21 express in this matter and the basis and  22 reason for those opinions."  23 Do you see that?  24 A. Yes.</p>	<p style="text-align: right;">Page 81</p> <p>1 your opinions are in this report so we make  2 sure we're all on the same page.  3 Let's start with the  4 definitions that you use which are on page 51  5 of your report.  6 A. Okay.  7 Q. Now, with respect to definition  8 4.4, which is the, quote, Venture, capital V,  9 end quote, you write that "The Venture refers  10 to all defendants in the opioid litigation."  11 Do you see that?  12 A. I do.  13 Q. What do you mean by "the opioid  14 litigation"?  15 A. Well, I mean this case.  16 Q. Now, are you aware of the  17 opioid manufacturers that are named as  18 defendants in this case?  19 A. Yes.  20 Q. What about -- are you aware  21 that there are opioid manufacturers that are  22 not named as defendants in this case?  23 A. Yes.  24 Q. Are the opioid manufacturers</p>

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1 that are not named as defendants in this case  
 2 part of the venture as you've defined it?  
 3 A. I do not know.  
 4 Q. How come you don't know?  
 5 A. Because I don't have any  
 6 information on them. There's no discovery  
 7 that I've seen.  
 8 Q. Is it possible that opioid  
 9 manufacturers that are not listed as  
 10 defendants in this case are part of what  
 11 you've defined as "the venture"?  
 12 A. Yes. Anything is possible.  
 13 Q. So you haven't undertaken any  
 14 analysis of whether manufacturers of opioids  
 15 not named as defendants in this case are  
 16 acting in concert with the manufacturer  
 17 defendants that are named in this case?  
 18 MS. CONROY: Objection.  
 19 THE WITNESS: No, I searched  
 20 the database, but there was -- there  
 21 are no relevant documents on that  
 22 issue on -- produced by other parties.  
 23 I can't know what people were  
 24 doing unless I have depositions and

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1 documents.  
 2 Q. (BY MR. DONOHUE) Well, in any  
 3 of the depositions and documents that you  
 4 reviewed as part of this engagement, did you  
 5 see references to other entities or  
 6 individuals that were not named as defendants  
 7 in the case?  
 8 A. I don't recall.  
 9 Q. And what is the time period  
 10 that you have used to describe the venture,  
 11 as you've defined it on page 51 of your  
 12 report?  
 13 A. I didn't use a time period, but  
 14 I guess there's kind of two time periods. So  
 15 I'll go to the hockey stick.  
 16 So I would say that the time  
 17 period for the massive overuse began in 1996,  
 18 the introduction of Purdue's drug.  
 19 However, there was some  
 20 beginning activities, by members of the  
 21 venture, as early as 1984, when Purdue  
 22 illegally marketed MS CONTIN.  
 23 So I would say that that --  
 24 that was the first act that was part of the

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1 concerted activity that led eventually do  
 2 this breakout in 1996.  
 3 Q. And what is the date of the  
 4 first act that you just testified to?  
 5 A. It was 9 -- in 1984 Purdue  
 6 started to market MS CONTIN. And that was  
 7 illegally marketed. It was not an approved  
 8 drug by the FDA.  
 9 Q. And they --  
 10 A. And they sold 770,000 pills, I  
 11 believe, before the FDA caught that.  
 12 MR. DONOHUE: I'll move to  
 13 strike as nonresponsive everything but  
 14 the date.  
 15 Q. (BY MR. DONOHUE) You said that  
 16 as part of the first act, members of the  
 17 venture acted together. What other members  
 18 of the venture do you believe acted together  
 19 in 1984?  
 20 A. The only member of the venture  
 21 in '84 was Purdue. I believe that was --  
 22 Purdue was the only member.  
 23 Q. If you turn to page 52 of your  
 24 expert report, marked as Exhibit 1F.

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1 And we'll go back to some of  
 2 these areas. I just want to get a high-level  
 3 view of your expert report.  
 4 So page 52 is entitled "Capsule  
 5 of Opinions."  
 6 Do you see that?  
 7 A. I do.  
 8 Q. Is the capsule of opinions  
 9 intended to be a summary of your overall  
 10 expert opinion?  
 11 A. Oh, it's kind of like the  
 12 highlights.  
 13 Q. So is it the highlights of what  
 14 is contained in the following opinions in  
 15 your expert report?  
 16 A. It's the highlights of the  
 17 entire report.  
 18 So I guess you could call it,  
 19 in terms of a movie, the -- like the little  
 20 things they show to encourage you to go to a  
 21 movie?  
 22 Q. The trailer?  
 23 A. Yeah, it's like a trailer.  
 24 Q. Then if you'd turn to page 53,

<p style="text-align: right;">Page 86</p> <p>1 you have as numeral 6, a title "In 2004, I  2 warned about the crisis; I was ignored."  3 Do you see that?  4 A. Yeah.  5 Q. Is that an opinion that you  6 intend to offer, if allowed, in this case?  7 A. It's an opinion I have.  8 I don't have any intention -- I  9 don't get to decide what questions are asked,  10 and I don't get to decide if a question is  11 asked whether I'm allowed to answer it.  12 All I have here, just to maybe  13 speed it up is my opinions. Okay?  14 I don't know what's going to  15 happen in court.  16 Q. So with respect to No. 6, "In  17 2004, I warned about the crisis; I was  18 ignored," fair to say that's an opinion  19 that -- an expert opinion that you've  20 expressed in your expert report?  21 A. Correct.  22 Q. And when did you form that  23 opinion?  24 A. Well, 19 -- 2004.</p>	<p style="text-align: right;">Page 88</p> <p>1 that right?  2 A. I don't know how to answer  3 that. I have to go through some of these. I  4 may have said -- I may have had some of these  5 opinions -- this is all of the opinions,  6 right? -- that you're referring to? All of  7 the opinions for that question? All of the  8 rest of the -- all of the rest up to 137 or  9 whatever it is? Is that a question for all  10 of the opinions from page 62 to 137?  11 Q. I was attempting to ask if this  12 was the -- all of the opinions that you have  13 since 2004 that are contained in your expert  14 report.  15 A. Yeah, what I'm saying, I may  16 have had some of those opinions before --  17 Q. Okay.  18 A. -- 2004.  19 Q. Okay. Could you --  20 A. I don't recall.  21 I don't recall, and I never  22 analyzed them by date. So in order to answer  23 that question, I need to go through and read  24 them.</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Okay. And then, I just want to  2 make sure I'm reading this right. So  3 underneath the statement in 2004, I warned  4 about the -- "I warned about the crisis; I  5 was ignored," there's, from page 53 to 61  6 paragraphs. My question is, are those  7 paragraphs contained in the pages of your  8 report separate opinions? Or are they  9 supporting material for your opinion about  10 warning of the crisis?  11 A. I think that's a metaphysical  12 question. I'm not sure I'm capable of  13 answering it.  14 I would say it certainly  15 supports the opinion in 6, but some of them  16 are separate opinions. So they're opinions  17 that explain the entire set of what goes into  18 the Opinion 6.  19 Q. Okay. And then, with respect  20 to the additional opinions that you have  21 formed since 2004, those start on page 62 of  22 your report.  23 MS. CONROY: Objection.  24 Q. (BY MR. DONOHUE) Do I have</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Okay.  2 A. I think most of these opinions  3 relate to material that I got in discovery in  4 this litigation. I may have had some of  5 these opinions in a general way before 2004.  6 Q. Let me ask you this. Would you  7 please go through the opinions contained on  8 Section 7 in your report and tell us what  9 opinions, if any, you formed prior to this  10 engagement?  11 A. Well, 7.3, I was certainly  12 aware of prior to this engagement of the  13 \$80 million penalty that Walgreens paid for  14 Jupiter and other things. And that's --  15 could be part of the basis of 7.3.  16 MR. DONOHUE: Can we take a  17 break, take our first break?  18 MS. CONROY: Let's just be --  19 I'm fine with a break, but let's just  20 be clear what he's looking for. You  21 want to know which of the 137 opinions  22 were formed after his retention in  23 this case in November of 2019 -- of  24 2018?</p>



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1 THE WITNESS: The opposite.  
2 Before. He wants to know before.  
3 MR. DONOHUE: Before.  
4 MS. CONROY: And that's what  
5 you want him to determine --  
6 MR. DONOHUE: Yes.  
7 MS. CONROY: -- during the  
8 break?  
9 MR. DONOHUE: Yes. If any.  
10 THE WITNESS: No, I'm not going  
11 to do that during a break.  
12 MR. DONOHUE: Well, we can take  
13 a longer break.  
14 THE WITNESS: I'm not going to  
15 do that during a break. When there's  
16 a break, there's a break. I'm not  
17 working during the break. I have  
18 union rules.  
19 MR. DONOHUE: All right. We'll  
20 wait for Special Master Cohen to get  
21 back.  
22 SPECIAL MASTER COHEN: I'm  
23 right here.  
24 You know, if the break is for

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1 us to break, it's for us to go to the  
2 bathroom and take a rest. And he  
3 doesn't need to spend 10 or 15 or  
4 20 minutes, unless you want to take a  
5 long break. But some of that's going  
6 to have to take away from your time.  
7 MR. DONOHUE: Okay. So, in  
8 other words, have him do it on the  
9 record?  
10 SPECIAL MASTER COHEN: That's  
11 probably better.  
12 MR. DONOHUE: All right.  
13 So I would like you to do that.  
14 I'll just restate the question.  
15 Q. (BY MR. DONOHUE) Would you  
16 please go through your opinions and tell us  
17 what opinions, if any, that you formed prior  
18 to this engagement?  
19 A. Okay.  
20 I'm going to have you help me.  
21 I have venture members.  
22 [Document review.]  
23 MR. DONOHUE: Do you want to  
24 know what? I will -- Special Master

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1 Cohen, I will withdraw the question so  
2 we can take a break.  
3 SPECIAL MASTER COHEN: Okay.  
4 MR. DONOHUE: Thank you. Off  
5 the record, please.  
6 THE VIDEOGRAPHER: Off the  
7 record. 10:51.  
8 (Recess taken, 10:50 a.m. to  
9 11:23 a.m.)  
10 THE VIDEOGRAPHER: We are back  
11 on the record at 11:24.  
12 MR. DONOHUE: For the record,  
13 we're going to mark as Deposition  
14 Exhibit No. 2, a copy of the poster  
15 board that's entitled "Deconstructing  
16 the myth that prescribed opioids have  
17 a low risk of addiction" that  
18 Dr. Egilman pointed to earlier. And  
19 so we'll get a copy of that, an 8 by  
20 11, hopefully, and just mark it for  
21 the record as Exhibit No. 2.  
22 MS. CONROY: And for the  
23 record, I will state when you reduce  
24 that to 8 by 11, it's illegible. So

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1 if it's -- we can get people an  
2 electronic copy or whatever, but just  
3 be advised that when you get home and  
4 you take a look at it, it can't be  
5 read.  
6 MR. DONOHUE: All right.  
7 Appreciate that.  
8 THE WITNESS: So you want me to  
9 continue my answer?  
10 MR. DONOHUE: No. I withdrew  
11 that question.  
12 (Whereupon, Deposition Exhibit  
13 Egilman 2, Poster (8.5 x 11 copy)  
14 Deconstructing the myth that  
15 prescribed opioids have a low risk of  
16 addiction by Daniel K. Cho, Mark  
17 Hocesvar, Brown University, was marked  
18 for identification.)  
19 Q. (BY MR. DONOHUE) With respect  
20 to your expert report, did you receive all of  
21 the documents that you needed to reach the  
22 opinions in your expert report?  
23 A. No.  
24 Q. Okay. What documents didn't

<p style="text-align: right;">Page 94</p> <p>1 you receive that you needed to reach your  2 opinions?</p> <p>3 A. I think I got some -- I think I  4 got an -- okay. So I got a thing on  5 limitations in my report. I couldn't review  6 missing or destroyed documents, so they were  7 missing and destroyed documents.</p> <p>8 I couldn't review documents  9 that were withheld as, quote, nonresponsive.  10 Some of the documents were produced even  11 though confidential with nonresponsive  12 blanks.</p> <p>13 I couldn't review documents  14 that would help based on a privilege claim.</p> <p>15 I couldn't review redacted  16 language that was in a lot of the  17 confidential documents.</p> <p>18 I didn't review correspondence  19 in non-produced personal e-mails. So there  20 were several participants who had a variety  21 of e-mails that weren't produced. Something  22 that said text messages. There were no text  23 messages produced.</p> <p>24 Purdue had a system of removing</p>	<p style="text-align: right;">Page 96</p> <p>1 asked. The implications of things I  2 didn't see, I can't answer. I don't  3 know how they may or may not have  4 altered an opinion I had.</p> <p>5 Q. (BY MR. DONOHUE) Since  6 March 25th, 2019, which is the date of your  7 report, have you formed any additional  8 opinions as an expert?</p> <p>9 A. No, but I have additional bases  10 for opinions.</p> <p>11 Q. What's the additional bases you  12 have for opinions since March 25, 2019?</p> <p>13 A. Well, I may have some  14 additional -- yeah, additional bases, so.  15 Let's see. There's an  16 additional bases folder here.</p> <p>17 Well, let me -- I mean, let me  18 go -- we can look for it.</p> <p>19 I can start with a -- I read  20 the appendix to Perri's report, where he goes  21 through more of the call notes and other  22 communications that companies made to  23 physicians and other parties. So that's one  24 category.</p>
<p style="text-align: right;">Page 95</p> <p>1 information from call notes, so I couldn't  2 review things that were removed.</p> <p>3 I didn't have access to all of  4 the documents produced in all the state  5 litigation.</p> <p>6 I didn't have the monitoring  7 reports that were part of the corporate  8 integrity agreements. I didn't have all of  9 the corporate integrity agreements. I didn't  10 have any -- oh, I'm sorry, I had Cephalon  11 hotline reports related to the CIA, but I did  12 not have any of the other CIA-associated  13 monitoring reports, ethics hotlines, or other  14 related documents.</p> <p>15 Q. So the opinions in your expert  16 report are based on incomplete information?</p> <p>17 MS. CONROY: Objection.</p> <p>18 THE WITNESS: Well, they're  19 based on the information that I had.  20 I can't know if the information that's  21 been destroyed would have impacted on  22 my opinions one way or the other.  23 It's a limitation that you asked me if  24 I -- I answered the question you</p>	<p style="text-align: right;">Page 97</p> <p>1 I don't think I listed this,  2 which I call the mushroom document, as part  3 of the basis for my opinion that the  4 physicians were not responsible for the  5 hockey stick.</p> <p>6 This is an e-mail from Kathe  7 Sackler -- to Kathe Sackler, Wednesday,  8 August 6, 1997.</p> <p>9 Oh, yes. Here's the new basis.  10 Do you have that? She found it.</p> <p>11 Okay. So this is J&amp;J Pain  12 Council Meeting, December 6, 2006.</p> <p>13 And then some additional bases  14 for 135, which is a CVS marketing agreement  15 with Endo.</p> <p>16 So there's --</p> <p>17 Q. Would you do me a favor and  18 just read the Bates numbers of those  19 documents into the record so we'll have a  20 record of what you're referring to?</p> <p>21 A. Sure. JAN-MS-00494367, and  22 then Endo Opioids MDL-06157733. Then the  23 Insys material that came out during the  24 Boston trial, I haven't seen all of the</p>

<p style="text-align: right;">Page 98</p> <p>1 transcripts of that trial, but I've read  2 reports of that trial, sometimes quotes from  3 testimony from that trial.  4 So that would be additional  5 opinions related to that.  6 And the same thing would be  7 true for the general -- although Rochester is  8 not a defendant in this case, you asked about  9 other people. I wasn't aware of what  10 Rochester had done until the recent press  11 coverage and pleading against them for  12 various bad acts with respect to the  13 uncontrolled distribution of drugs to their  14 customers.  15 Then I have -- I did bring -- I  16 don't think I brought with me, but I have --  17 as you know, I had the Robert Wood Johnson  18 opinion. And yesterday I got, probably 4 or  19 5,000 pages of more detail on Robert Wood  20 Johnson Foundation, board of directors, their  21 bios of their contacts with primarily Johnson  22 &amp; Johnson as the corporate entity in terms of  23 the overlapping board of directors of Robert  24 Wood Johnson Foundation.</p>	<p style="text-align: right;">Page 100</p> <p>1  2 Let's take a quick look. I  3 think that's it.  4 Q. Okay. Could we go --  5 A. Just let me finish taking a  6 quick look to see if there's anything else --  7 Q. Oh, I apologize.  8 A. -- on the table.  9 Yeah, I think 6 is slide deck.  10 So this is another bases. I  11 have an opinion on slide deck creation, and  12 this is just another company's same  13 activities. This is Bates numbers  14 acquired_activists_00367447.  15 Let me see this. What is that?  16 This is the "See no evil" document. I think  17 this is not in the report. This is  18 Endo_0064825.  19 I think that's it.  20 Q. Okay. Could we go back to your  21 report, which we've marked as Exhibit 1F.  22 And go to page 29, which is your background  23 and qualifications?  24 A. Okay.</p>
<p style="text-align: right;">Page 99</p> <p>1 I think the Ohio hockey stick.  2 No. 7. How about this 6, then. So this is a  3 Summit County PowerPoint. And it's -- you  4 know, it came in native form, so I don't have  5 the Bates number.  6 I can identify it -- this is  7 the first page. It's in the production. So  8 that's the first page of it. The first page  9 says "Facing the Opioid Epidemic. How we got  10 here and what we need to do next." And it  11 was by Christina Delos Reyes. It's titled  12 "The Role of the Physician, Prescription Drug  13 Abuse. Akron General Wellness Center,  14 May 31, 2014."  15 And it has an Ohio-specific  16 hockey stick chart in it, along with the  17 specific -- some of the specific marketing  18 activities that trail the hockey stick.  19 So ...  20 Q. Does the mushroom document have  21 the Bates number?  22 A. Mushroom. Yeah, mushroom.  23 It's over here. Bates number  24 for the mushroom. PDD_8801118262.</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Okay. And so I think you  2 testified earlier you're currently a -- still  3 a medical doctor; right?  4 A. Correct.  5 Q. And if we turn to page 31, you  6 have a paragraph about the middle of the page  7 where you talk about warnings.  8 Would you consider yourself an  9 expert in warnings?  10 A. Yes.  11 Q. Are you familiar with TIRF  12 REMS?  13 A. I'm familiar with REMS  14 programs.  15 Q. Okay. What do you know about  16 the REMS program?  17 A. Well, what I'm -- when  18 evaluated -- there's been several recent  19 papers on the REMS programs in the last year.  20 And -- do you really want me to -- ask me  21 what I know about the REMS program? Because  22 that's a very, very long answer.  23 Q. No, I appreciate that.  24 A. I'd be glad to give you that</p>

<p style="text-align: right;">Page 102</p> <p>1 answer, okay, but --</p> <p>2 Q. Let me withdraw that and ask a</p> <p>3 different question.</p> <p>4 A. Okay.</p> <p>5 Q. Did you consider the TIRF REMS</p> <p>6 program in rendering the expert opinions in</p> <p>7 your report?</p> <p>8 A. I think so.</p> <p>9 Q. You testified that you consider</p> <p>10 yourself an expert in warnings. What other</p> <p>11 areas do you believe you have expertise in?</p> <p>12 If any.</p> <p>13 A. Well, do you want to define</p> <p>14 "expert"?</p> <p>15 Q. What other areas do you believe</p> <p>16 you're qualified to testify as an expert in</p> <p>17 litigation other than warnings?</p> <p>18 A. That's the --</p> <p>19 MS. CONROY: Objection. Legal</p> <p>20 opinion.</p> <p>21 THE WITNESS: -- up to the</p> <p>22 judge. If you don't want to define</p> <p>23 expert, I will.</p> <p>24 My understanding of the</p>	<p style="text-align: right;">Page 104</p> <p>1 health.</p> <p>2 The second issue with respect</p> <p>3 to public health is getting people to</p> <p>4 change their behavior to use the</p> <p>5 information in part one.</p> <p>6 I am an expert in the aspects</p> <p>7 of part one. Those aspects being,</p> <p>8 generally, molecular understanding of</p> <p>9 cause-effect relationships, the</p> <p>10 epidemiology, toxicology. The -- then</p> <p>11 at a higher level, a social and</p> <p>12 cultural aspects of the causes of</p> <p>13 disease.</p> <p>14 So there's -- which is not a</p> <p>15 lot of academic work in that area.</p> <p>16 Then the other part of public</p> <p>17 health is to take the information that</p> <p>18 we've gathered from part one, and try</p> <p>19 to get people to change their</p> <p>20 behavior, to stop doing things that</p> <p>21 you've determined cause disease, and</p> <p>22 to get them to do things that promote</p> <p>23 health and longevity.</p> <p>24 And at a patient level -- and</p>
<p style="text-align: right;">Page 103</p> <p>1 definition of expert in this context</p> <p>2 is that I know more than the layman</p> <p>3 and can assist the jury in</p> <p>4 understanding the issues in the case</p> <p>5 beyond the ability of the normal</p> <p>6 layman to understand the material that</p> <p>7 I read, review, consider, and</p> <p>8 generally summarize. So that -- if</p> <p>9 that's the definition of expert, I'll</p> <p>10 go ahead and answer that question.</p> <p>11 So an expert in internal</p> <p>12 medicine. Occupational environmental</p> <p>13 medicine and toxicology. I'm an</p> <p>14 expert in molecular biology. I'm an</p> <p>15 expert in warnings and risk</p> <p>16 communication.</p> <p>17 All aspects of public health.</p> <p>18 Public health includes two, kind of,</p> <p>19 components. The first component of</p> <p>20 public health is trying to figure out</p> <p>21 what makes people sick, and the second</p> <p>22 is what makes people healthy.</p> <p>23 Actually, that's two components</p> <p>24 of the first question of the public</p>	<p style="text-align: right;">Page 105</p> <p>1 there are two levels for those</p> <p>2 interventions. At least two levels.</p> <p>3 One level is with respect to</p> <p>4 things that impact on the individual</p> <p>5 at an individual level. So that</p> <p>6 involves -- I'll give you the</p> <p>7 occupational environmental construct</p> <p>8 of that in hierarchy.</p> <p>9 So the first thing to do -- and</p> <p>10 I'll try to give you some relevant</p> <p>11 examples as we go along.</p> <p>12 MR. DONOHUE: I'm only</p> <p>13 interested in what you think you're as</p> <p>14 an expert. So you seem to be straying</p> <p>15 into a long explanation about those.</p> <p>16 Can you do it more briefly, please?</p> <p>17 MS. CONROY: Objection.</p> <p>18 THE WITNESS: Is that -- is</p> <p>19 that an objection to the answer -- I</p> <p>20 don't understand what that was.</p> <p>21 Q. (BY MR. DONOHUE) I'm asking</p> <p>22 you to summarize instead of giving detailed</p> <p>23 answers in the areas where you believe you</p> <p>24 have expertise. So I understand you have</p>

<p style="text-align: right;">Page 106</p> <p>1 expertise, you believe, in public health, and  2 you explained that.  3 A. I didn't finish explaining  4 that. There's many aspects of public health,  5 and I've given you the aspects of public  6 health, which --  7 Q. If you could do it in list  8 form, that would be more helpful and  9 efficient.  10 MS. CONROY: Objection.  11 THE WITNESS: Okay. Well, I'm  12 going to try to give it to you in the  13 form that I understand it. Okay? And  14 so they have -- this is how I explain  15 it when I'm in court, for example.  16 So the hierarchy from the --  17 and because this is -- it's an  18 expertise -- the expertise -- I'll  19 start making sense with expertise, to  20 make sure it's exactly relevant. The  21 expertise is in the first hierarchy of  22 changing what people do is  23 substitution of a safer, for a more  24 dangerous product.</p>	<p style="text-align: right;">Page 108</p> <p>1 at the micro level as it applies to  2 the patient.  3 Then at the macro level, that's  4 changing policy. Okay? And so I have  5 some expertise in social change, how  6 social change occurs at a macro level.  7 And I teach about that.  8 And that means how you create  9 social movement to change ideas in the  10 society. And those general ideas  11 might change the effect of how people  12 get treated in this case for pain.  13 And that involves legislative  14 interventions, community organizing,  15 et cetera. I have expertise in that.  16 And it also involves, at a  17 macro level, trying to influence ideas  18 in a society about appropriate care  19 and appropriate achievement.  20 And that's done through a  21 variety of mechanisms, the current era  22 that involves an element of social  23 media and academic publication and  24 some combination thereof.</p>
<p style="text-align: right;">Page 107</p> <p>1 So in the case of opioids, it  2 would be the study of the various ways  3 that one could treat pain that would  4 not -- that would diminish the risk of  5 addiction. That's an expertise.  6 That's a way of looking at  7 cost-benefit analyses, looking at all  8 the side effects, et cetera.  9 So if you don't substitute,  10 then the next level down, which I have  11 expertise in, is in trying to avoid  12 the exposures in an administrative  13 fashion. And so that would be -- in  14 the case of opioids, figuring out how  15 you can control the use of opioids by  16 controlling physician prescriptions,  17 educating the public, et cetera.  18 And I have expertise in that  19 with respect to opioids and general  20 expertise with respect to public  21 health.  22 So that -- pretty much from an  23 opioid perspective, those are the  24 expertises from public health. That's</p>	<p style="text-align: right;">Page 109</p> <p>1 So that's roughly the public  2 health expertises that relate to this  3 case.  4 For example, you know, I gave  5 the presentation to the FDA that  6 involves both understanding the  7 mechanism of addiction from a -- the  8 way that -- the relationship of the  9 dosing system to the addiction. And  10 also I went to the FDA to try to  11 impact on policy.  12 So I'm working on policy issues  13 with respect to talc and other things  14 at a state and local and national  15 level. So I have expertise in that  16 and I teach about that.  17 I'm an expert in Hill  18 considerations in epistemology,  19 E-P-I-S-T-E-M-O-L-O-G-Y. And that's  20 how we know what we know.  21 From a scientific perspective.  22 Then this how we know what we believe,  23 that's involves sociology,  24 anthropology aspects and public policy</p>



<p style="text-align: right;">Page 110</p> <p>1 issues.</p> <p>2 I'm an expert in pharmaceutical</p> <p>3 and other medical products of</p> <p>4 marketing practices, and I've</p> <p>5 published on that.</p> <p>6 Of course I think we went</p> <p>7 through I'm an expert on warnings.</p> <p>8 I'm an expert on evaluating the</p> <p>9 side effects of pain medications, and</p> <p>10 using secret corporate documents and</p> <p>11 data. That, per se, is an expertise,</p> <p>12 to try to get information out about</p> <p>13 the health effects and side effects of</p> <p>14 pain medications.</p> <p>15 And I've done a little bit with</p> <p>16 respect to opioids, to the extent that</p> <p>17 the documents are not confidential,</p> <p>18 and I've done a lot with respect to</p> <p>19 other pain medicines, like Vioxx.</p> <p>20 I'm also an expert in how</p> <p>21 corporations evaluate the efficacy of</p> <p>22 their market and control and follow</p> <p>23 what they and their competitors say</p> <p>24 about their products.</p>	<p style="text-align: right;">Page 112</p> <p>1 bear on the expertise of a witness.</p> <p>2 And so to try to cut down an</p> <p>3 answer that you asked with respect to</p> <p>4 expertise is rather alarming, given</p> <p>5 what's coming in June.</p> <p>6 SPECIAL MASTER COHEN: So the</p> <p>7 defendants are free to ask no</p> <p>8 questions and get no information. And</p> <p>9 if they choose to ask a question and</p> <p>10 limit it, they're allowed to do that.</p> <p>11 What I think happened here was</p> <p>12 that the defendant asked for a list of</p> <p>13 areas of expertise. Two examples are</p> <p>14 social policy and epistemology. I</p> <p>15 can't say that. I just said that in</p> <p>16 five words.</p> <p>17 So somewhere between a short</p> <p>18 list and a long explanation of what</p> <p>19 each one of those means is how this</p> <p>20 has to happen.</p> <p>21 They're entitled to ask you to</p> <p>22 restrict your answers, Dr. Egilman, in</p> <p>23 a way that provides only what they're</p> <p>24 asking. That's their choice.</p>
<p style="text-align: right;">Page 111</p> <p>1 So, for example, I've reviewed</p> <p>2 PMRD and research data, analyzed that</p> <p>3 data and published on that data.</p> <p>4 I'm an expert --</p> <p>5 MR. DONOHUE: I'm going to</p> <p>6 object. Special Master Cohen, I'm</p> <p>7 going to ask you to direct the witness</p> <p>8 to answer the question in a summary</p> <p>9 fashion without -- for using words</p> <p>10 like, "for example," in an attempt to</p> <p>11 filibuster a question. Which,</p> <p>12 although I recognize, as stated was</p> <p>13 somewhat broad, I have also made it</p> <p>14 clear that I'm interested in a summary</p> <p>15 of the areas he believes he has</p> <p>16 expertise in, not on a what has now</p> <p>17 been a 15-minute speech.</p> <p>18 MS. CONROY: Your Honor, this</p> <p>19 was not a speech. It was an answer to</p> <p>20 a question that was asked by a</p> <p>21 defendant, and I would also comment</p> <p>22 that the defendants have made it very</p> <p>23 clear there will be Daubert motions</p> <p>24 filed in this case that will directly</p>	<p style="text-align: right;">Page 113</p> <p>1 Frankly, maybe it would be better for</p> <p>2 them to get more information from you,</p> <p>3 but they're entitled not to do that.</p> <p>4 So if they want succinct answers,</p> <p>5 that's what you need to give them.</p> <p>6 Okay?</p> <p>7 THE WITNESS: Okay.</p> <p>8 MS. CONROY: Thank you.</p> <p>9 SPECIAL MASTER COHEN: Okay.</p> <p>10 Q. (BY MR. DONOHUE) Do you have</p> <p>11 any other additional areas to list to</p> <p>12 complete your answer with respect to your</p> <p>13 expertise?</p> <p>14 A. Why don't you go back and</p> <p>15 re-ask the question.</p> <p>16 Q. The question was what areas do</p> <p>17 you believe that you have expertise in. And</p> <p>18 I had asked for a list of those areas.</p> <p>19 A. Here, I'm having a little</p> <p>20 trouble given the ruling.</p> <p>21 So, you know, I've published on</p> <p>22 a lot of health effects of a lot of different</p> <p>23 substances, peer-reviewed papers. Okay? So</p> <p>24 you want me to just say that I've published</p>

<p style="text-align: right;">Page 114</p> <p>1 on the health effects of a lot of substances  2 and the side effects of a lot of things? Is  3 that all you want?  4 Q. If that is responsive to the  5 question, if it's true.  6 A. Well, what's responsive to the  7 question I'm going to give you the detail of  8 each of the substances that I'm an expert in.  9 I'm not an expert in every toxic substance.  10 Okay? I'm an expert in the ones that I have  11 studied, reviewed, published on. So  12 that's --  13 I mean, I don't --  14 I mean, I can just -- I mean, I  15 can refer you to my CV. Why don't I  16 incorporate my CV, and that saves a lot of  17 time?  18 Q. Okay.  19 A. In addition to that, I'm an  20 expert on international health and the  21 development of medical schools in developing  22 countries.  23 I'm an expert in minority  24 recruitment to medical schools.</p>	<p style="text-align: right;">Page 116</p> <p>1 opioids to treat pain?  2 A. Yes.  3 Q. What research have you done?  4 A. Well, in terms of published  5 research? I have the work I did -- I think I  6 published -- presented APHA in the FDA  7 presentation. The rest of the research  8 involves reading literature over time and  9 reading the corporate documents, initially  10 the Purdue documents between 2003, 2005, and  11 then the last several years -- well, the last  12 several months reading all of your documents.  13 In addition, I've read --  14 reviewed opioid literature over time. That's  15 published literature.  16 Q. As part of this engagement, did  17 you conduct any quantitative analysis to  18 determine whether defendants' marketing  19 influenced any prescribing decision?  20 A. Do you mean from a particular  21 prescriber? Or a particular practitioner?  22 Q. Yes.  23 A. Yes.  24 Q. What quantitative analysis did</p>
<p style="text-align: right;">Page 115</p> <p>1 I'm an expert in the  2 organization of non-profits, the rules and  3 regulations of non-profits.  4 I think that's it for general  5 categories.  6 Q. Do you consider yourself an  7 expert on the FDA's regulations concerning  8 pharmaceutical marketing?  9 A. Yes.  10 Q. Do you consider yourself an  11 expert in pain management?  12 MS. CONROY: Objection.  13 THE WITNESS: Well, I consider  14 myself an expert in treating people  15 who have pain for diseases.  16 Certain diseases. Not all  17 diseases.  18 Q. (BY MR. DONOHUE) Do you have  19 any clinical experience in pain management?  20 A. Well, I have a lot of clinical  21 experience treating people for pain from  22 various diseases, yes.  23 Q. Have you done any research  24 relating to pain management and the use of</p>	<p style="text-align: right;">Page 117</p> <p>1 you do?  2 A. Well, I reviewed the ROI data  3 and the detailed reports from many of the  4 defendants. And that -- that all -- some of  5 it was specific to specific physicians.  6 I remember it was -- it was one  7 physician whose name came up in the SIG  8 affiliated with impact who was a high user,  9 and somebody saw his name and sent marketing  10 people to that person. There's the document  11 that talks about no sex, no prostitutes. So  12 that refers to successful marketing  13 intervention with a particular doctor's name.  14 I don't remember.  15 I don't think that was a  16 formula. I think it was a particular doctor.  17 So there is a whole slew of --  18 and also some of this is in Perri's report,  19 of indications from detail reps that their  20 work with a rep, with a physician increased  21 that physician's prescribing of opioids.  22 Q. Are you board certified in  23 internal medicine in preventive occupational  24 medicine?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. Yes.</p> <p>2 Q. And I see from page 30 of your</p> <p>3 expert report that you say you ran a clinic</p> <p>4 for 12 to 13 years.</p> <p>5 A. Right.</p> <p>6 Q. What years were those that you</p> <p>7 ran the medical clinic?</p> <p>8 A. '89 to 2002.</p> <p>9 Q. Were you a family medicine</p> <p>10 doctor during that time in clinic?</p> <p>11 A. In part. I had three general</p> <p>12 activities.</p> <p>13 Q. What were the three general</p> <p>14 activities?</p> <p>15 A. Internal medicine, family</p> <p>16 medicine, consulting for companies in</p> <p>17 occupational environmental health issues.</p> <p>18 Q. As a doctor, have you treated</p> <p>19 patients for pain from cancer?</p> <p>20 A. Yes.</p> <p>21 Q. And as a doctor, have you</p> <p>22 treated patients for pain for -- or excuse</p> <p>23 me. Strike that.</p> <p>24 Have you treated patients with</p>	<p style="text-align: right;">Page 120</p> <p>1 what I prescribed.</p> <p>2 MR. DONOHUE: Can you hand that</p> <p>3 to the court reporter and we'll mark</p> <p>4 that as Deposition Exhibit 3.</p> <p>5 (Whereupon, Deposition Exhibit</p> <p>6 Egilman 3, IMS Data, David Egilman,</p> <p>7 was marked for identification.)</p> <p>8 MS. CONROY: Do you have any</p> <p>9 copies?</p> <p>10 MR. DONOHUE: Sorry, I thought</p> <p>11 I did, and I'm looking for them right</p> <p>12 now.</p> <p>13 THE WITNESS: Let me just take</p> <p>14 an aside here. Do you know using this</p> <p>15 is illegal based on the contract with</p> <p>16 IMS. I just want to make that record.</p> <p>17 Q. (BY MR. DONOHUE) This is a --</p> <p>18 well, let's identify a document that we've</p> <p>19 marked as Exhibit 3.</p> <p>20 Is this the IMS data that</p> <p>21 you're referring to?</p> <p>22 A. It is.</p> <p>23 Q. And is this a document that you</p> <p>24 have attached to your expert report?</p>
<p style="text-align: right;">Page 119</p> <p>1 chronic non-malignant pain as a doctor?</p> <p>2 MS. CONROY: Objection.</p> <p>3 Q. (BY MR. DONOHUE) Do you</p> <p>4 believe opioids are addictive?</p> <p>5 A. Yes.</p> <p>6 Q. When did you first learn that</p> <p>7 opioids are addictive?</p> <p>8 A. I don't recall.</p> <p>9 Q. Did you know --</p> <p>10 A. Maybe when I read a biography</p> <p>11 of Charles Dickens. This would have been in</p> <p>12 the '70s sometime.</p> <p>13 Q. Have you prescribed opioids to</p> <p>14 your patients?</p> <p>15 A. Yes.</p> <p>16 Q. What opioids have you</p> <p>17 prescribed to your patients?</p> <p>18 A. Well, if you look, it was</p> <p>19 produced in this case. I think it's one of</p> <p>20 the exhibits.</p> <p>21 Purdue got my IMS data, and two</p> <p>22 or three year -- about five years of that</p> <p>23 data is accurate. So you'd have to go -- let</p> <p>24 me get that document out and I'll tell you</p>	<p style="text-align: right;">Page 121</p> <p>1 A. It is.</p> <p>2 Q. And you believe this document</p> <p>3 is illegal?</p> <p>4 A. No, its use --</p> <p>5 MS. CONROY: Objection.</p> <p>6 THE WITNESS: -- in this format</p> <p>7 is illegal.</p> <p>8 Q. (BY MR. DONOHUE) If you</p> <p>9 believe the use of it is illegal, why did you</p> <p>10 attach it to your expert report?</p> <p>11 MS. CONROY: Objection.</p> <p>12 THE WITNESS: Because it's not</p> <p>13 illegal for me to use. There's a</p> <p>14 contract between Purdue and IMS that</p> <p>15 says that this cannot be used for any</p> <p>16 other purpose besides marketing the</p> <p>17 drug. And they used it to</p> <p>18 cross-examine me in a deposition.</p> <p>19 That's an illegal use, according to</p> <p>20 their contract.</p> <p>21 Q. (BY MR. DONOHUE) So back to my</p> <p>22 question, with respect to your treatment of</p> <p>23 your patients as a medical doctor, what</p> <p>24 opioids did you prescribe to your patients?</p>

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1 A. Okay. Well, let me -- let's  
2 go --  
3 So if you look at pages 1 and 2  
4 of this, those are -- those are prescriptions  
5 that I prescribed. And those -- not page 3.  
6 Just pages 1 and 2. Pages -- page 3 is some  
7 mess-up of IMS data because I was not working  
8 at that clinic at that time, and so I did not  
9 write those prescriptions.  
10 But if you look at page 1 and  
11 page 2, you have Lorcet, Percocet generic,  
12 Oxycodone tabs, 5 milligrams, Tylenol and  
13 codeine, Vicodin line.  
14 And the next page, Darvocet  
15 generic, Lorcet generic, Oxy slow release 80,  
16 two prescriptions for that. Oxy SR20, and  
17 Oxy 40.  
18 And then OxyContin tabs.  
19 20 milligrams, 40 milligrams, Percocet 2.5  
20 325 milligrams.  
21 Percocet 7.5, 500 milligrams.  
22 Percocet generic, Tylenol and  
23 codeine generics, Vicodin generic,  
24 Vicoprofen 7.5, 200 milligrams.

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1 Q. And the last date that I can  
2 read on page 2 of deposition Exhibit 3 is  
3 July 2001.  
4 Or I assume that the next one  
5 is August 2001. Do you see that?  
6 A. You're talking about those  
7 first two pages. That's not the entire  
8 exhibit.  
9 Q. Correct.  
10 A. The last date on the entire  
11 exhibit is December 2003.  
12 Q. Right. But you said that the  
13 last page, page No. 3 of the exhibit doesn't  
14 apply to you.  
15 A. Well, no, it's got my name on  
16 it. It's not my prescriptions.  
17 Q. Okay. So I'm asking you about  
18 the ones you agree that they're your  
19 prescriptions. The date ending on that  
20 information is August of 2001.  
21 A. That's correct. That was not  
22 your question. That's your question now. It  
23 wasn't your previous question.  
24 Q. Since August 2001, have you

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1 prescribed opioids to any of your patients?  
2 A. I don't think so. It's  
3 possible that I supervised the prescription  
4 of opioids when I was supervising residents  
5 of family medicine. But I wouldn't have  
6 written those prescriptions, and I don't have  
7 any -- but I would have been responsible for  
8 those prescriptions. I don't have any  
9 specific recollection of that actually  
10 happening.  
11 Q. For the prescriptions that you  
12 wrote for opioids when treating your  
13 patients, did you prescribe opioids because  
14 it was medically necessary?  
15 A. Yes and no.  
16 Q. When were the times you  
17 prescribed opioids to your patients when it  
18 wasn't medically necessary?  
19 A. Do you see the OxyContin's?  
20 Okay? On the second page of the exhibit?  
21 I think most of these relate to  
22 one patient, and I was -- he was addicted.  
23 And I was trying to get him off.  
24 So it was medically necessary

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1 so he wouldn't go into withdrawal, but that's  
2 not a medical necessity in terms of treating  
3 the pain.  
4 And I tried to get him off, and  
5 I failed and therefore I cut him off.  
6 Q. Other than the patient that you  
7 just mentioned, are you aware of any other  
8 patients that you prescribed opioids to that  
9 became addicted?  
10 A. No.  
11 Q. Did you refer to any of your  
12 patients' files in reaching the opinions in  
13 your expert report that we're here today  
14 looking at?  
15 A. I don't have access to my  
16 patients' files.  
17 Q. So the answer is no?  
18 A. That's kind of a vague and  
19 ambiguous question, but if you're asking just  
20 whether I looked in the file, the answer is  
21 no.  
22 If you're asking whether I  
23 relied on information that I gathered while I  
24 was treating patients, the answer is yes.

<p style="text-align: right;">Page 126</p> <p>1 But I didn't look at the file.</p> <p>2 Q. Do you believe chronic pain is</p> <p>3 a serious medical condition?</p> <p>4 MS. CONROY: Objection.</p> <p>5 THE WITNESS: May or may not</p> <p>6 be.</p> <p>7 Q. (BY MR. DONOHUE) Sometimes it</p> <p>8 is?</p> <p>9 A. Sometimes it is.</p> <p>10 Q. How do you --</p> <p>11 A. Well, sometimes chronic pain is</p> <p>12 a symptom of a serious medical condition.</p> <p>13 And probably, rarely, chronic pain is --</p> <p>14 well, no. It's -- it's not in and of</p> <p>15 itself -- it always comes from something.</p> <p>16 Okay? So the something that causes the</p> <p>17 chronic pain can be a serious medical</p> <p>18 condition. Part of the seriousness of the</p> <p>19 medical condition is the fact that the person</p> <p>20 is in pain.</p> <p>21 Q. Do you believe that chronic</p> <p>22 pain affects people that are in Summit</p> <p>23 County, Ohio?</p> <p>24 A. I'm sure they -- I'm sure there</p>	<p style="text-align: right;">Page 128</p> <p>1 treat patients as a medical doctor, do you</p> <p>2 treat the patients individually?</p> <p>3 A. Not always.</p> <p>4 Q. What's an example of when you</p> <p>5 don't treat a patient as an individual?</p> <p>6 A. I might treat a family, or a</p> <p>7 parent and a child. They might have --</p> <p>8 particularly with respect to children.</p> <p>9 There's always someone else who I'm dealing</p> <p>10 with.</p> <p>11 In some cases there are issues</p> <p>12 that I'm treating that relate to the</p> <p>13 interaction of both parties, both a child and</p> <p>14 a parent or the parents.</p> <p>15 Q. Do you believe there's a single</p> <p>16 treatment option that would be appropriate</p> <p>17 for every patient that was suffering from</p> <p>18 chronic pain?</p> <p>19 A. No.</p> <p>20 Q. When you treat patients, do you</p> <p>21 believe it's important to have a variety of</p> <p>22 treatment options to choose from?</p> <p>23 A. Yes and no.</p> <p>24 Q. What's the no part?</p>
<p style="text-align: right;">Page 127</p> <p>1 are people in pain in Summit County, Ohio.</p> <p>2 Q. What about Cuyahoga County,</p> <p>3 Ohio? Do you believe there are people that</p> <p>4 are in chronic pain living there?</p> <p>5 A. I'm sure there are.</p> <p>6 Q. What about in the</p> <p>7 United States? What would you estimate is</p> <p>8 the number of people in the United States</p> <p>9 that are affected with chronic pain?</p> <p>10 A. I don't think there are good</p> <p>11 estimates of that number. I don't know.</p> <p>12 Q. Would it be millions of people?</p> <p>13 A. I don't think so.</p> <p>14 Q. Less than a million?</p> <p>15 A. I don't have a number. There's</p> <p>16 no good studies.</p> <p>17 Q. Do you believe there are any</p> <p>18 risks, medical risks associated with</p> <p>19 untreated chronic pain?</p> <p>20 MS. CONROY: Objection.</p> <p>21 THE WITNESS: There are medical</p> <p>22 risks of not treating the disease</p> <p>23 that's causing chronic pain.</p> <p>24 Q. (BY MR. DONOHUE) When you</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Well, if you come in with a cut</p> <p>2 finger, I don't need five different ways to</p> <p>3 fix that cut finger.</p> <p>4 Pretty much there's one way to</p> <p>5 fix that cut finger, depending on how long</p> <p>6 the cut or how deep it is. If it's big</p> <p>7 enough, it's going to need to be sutured.</p> <p>8 There's going to be no other alternative. It</p> <p>9 doesn't help -- there are no other</p> <p>10 alternatives.</p> <p>11 If you come in with an</p> <p>12 infection and I have an antibiotic that works</p> <p>13 on that infection, I don't need other</p> <p>14 options. I just need the one antibiotic.</p> <p>15 So those are examples of where</p> <p>16 I don't need a lot of options.</p> <p>17 Q. Could you turn to page 37 of</p> <p>18 your report, please?</p> <p>19 Actually, I apologize.</p> <p>20 Page 36. So at the end of your background</p> <p>21 and qualifications which runs from page 29 to</p> <p>22 page 36 of your report, you write that you've</p> <p>23 reached the conclusions stated below to a</p> <p>24 reasonable degree of medical probability</p>



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1 based on your review of the medical and  
2 scientific literature, corporate documents,  
3 deposition, and on your years of training and  
4 clinical experience. Do you see that?  
5 A. Yes.  
6 Q. When you are referencing the  
7 conclusions stated below, are you referencing  
8 the opinions that you give in the remainder  
9 of the report?  
10 A. Yes.  
11 Reference -- yeah, I'm  
12 referencing everything in the report.  
13 Q. Now, with respect to the  
14 methodology which starts on page 37 of your  
15 report, you write that you base your opinions  
16 on the following sources of information.  
17 So I want to ask you a couple  
18 of questions about that, if that's all right.  
19 Review of medical literature.  
20 Did you review medical literature in support  
21 of your opinions?  
22 A. No.  
23 Q. You did not?  
24 A. I did not do what you just

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1 asked.  
2 Q. Okay. Let me back up, then.  
3 A. Alone. Okay? It's a -- okay?  
4 I did not do what you just asked.  
5 Q. Are you basing your opinions on  
6 your report on a review of medical  
7 literature?  
8 A. Yes.  
9 Q. And did you review any medical  
10 literature?  
11 A. Yes.  
12 Q. And did you review medical  
13 journals?  
14 A. Yes.  
15 Q. Did you --  
16 A. I didn't review journals. I  
17 reviewed journal articles. Articles that  
18 appeared in journals.  
19 Q. Is there anywhere in your  
20 report that lists out the medical journal  
21 articles that you reviewed that are the bases  
22 of your opinions?  
23 A. Well, there's two places there.  
24 You have a long list of all of the articles

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1 that I searched over.  
2 Q. Okay.  
3 A. And then at the -- in some of  
4 the opinions I cite specific medical  
5 literature.  
6 So it appears in aggregate and  
7 then attached to some specific opinions.  
8 Q. Did you select all of the  
9 medical journal articles that you reviewed  
10 that form the basis of your opinion?  
11 A. Yes.  
12 Q. And if we -- let me just go  
13 through this and ask these questions.  
14 When you write "Review of  
15 medical literature," and then underneath it  
16 says "Medical meetings," what does that refer  
17 to?  
18 A. Well, you know how impact and  
19 action have meetings? So I got the minutes  
20 of those meetings and I reviewed those. FDA  
21 meetings. I reviewed those.  
22 There are some memos, corporate  
23 memos of meetings. So that kind of business.  
24 Q. And if you took the first

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1 bullet point, which is your review of medical  
2 literature, how many hours would you estimate  
3 that you spent reviewing medical literature?  
4 A. No idea.  
5 Q. Can you estimate for us?  
6 A. No.  
7 Q. Well, you spent 384 hours total  
8 in the four months that you've been on this  
9 engagement; right?  
10 A. Yeah, this isn't limited to the  
11 four months I've been involved in this  
12 engagement.  
13 Q. What is it comprised of?  
14 A. It's limited to my entire life  
15 starting in 1973, probably. So I've been  
16 reviewing this kind of work since 1973.  
17 So, you know, it's not -- I  
18 didn't start looking at this like last month,  
19 November.  
20 Q. So if I wanted to know --  
21 A. I mean, for example, you know  
22 that I gave a report, including some of the  
23 documents, in 2004 and '5, all of the things  
24 in that time frame as well. Related to the

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1 secret documents.  
2 Q. If we wanted to know what  
3 medical literature specifically you based  
4 your opinions on since you have been engaged,  
5 would you be able to answer that?  
6 A. Anything dated since November,  
7 I -- is something that I read since I've been  
8 engaged.  
9 Q. And are you able to estimate  
10 how many hours in the last four months that  
11 you have reviewed medical literature?  
12 A. No.  
13 Q. How about review of published  
14 books? Are you able to estimate how many  
15 hours in the last four months you've reviewed  
16 published books?  
17 A. No.  
18 Q. How about review of corporate  
19 documents? Do you have a list of the  
20 productions that you reviewed? Did you  
21 personally review documents from those  
22 productions?  
23 A. Yes.  
24 Q. And how many hours in the last

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1 four months have you spent reviewing  
2 corporate documents?  
3 A. I do not know.  
4 Q. Do you have any guess?  
5 A. Less than 384.  
6 Q. And if you'd turn to page 38,  
7 you have a category "Review of other produced  
8 documents."  
9 Do you see that?  
10 A. I do.  
11 Q. Can you estimate how many hours  
12 in the last four months you've reviewed other  
13 produced documents?  
14 A. No.  
15 Q. And then you have a review of  
16 depositions. Do you see that?  
17 A. I do.  
18 Q. Can you estimate how many hours  
19 in the last four months you've spent  
20 reviewing depositions?  
21 A. No.  
22 Q. With respect to your staff, do  
23 you know how many hours any member of your  
24 staff would have spent on any of the

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1 materials reviewed that we just went through?  
2 A. No.  
3 Q. And what about the students?  
4 Would you have any idea of the number of  
5 hours the students that are working with you  
6 have reviewed on any of the materials we've  
7 gone through?  
8 A. No.  
9 Q. As part of your engagement in  
10 this litigation, have you conducted  
11 interviews of witnesses?  
12 A. No.  
13 Q. As part of your engagement,  
14 have you discussed the litigation with any  
15 other experts?  
16 A. This litigation?  
17 Q. Yes.  
18 A. No.  
19 Q. As part of this litigation and  
20 your engagement, have you reviewed any  
21 individual patient's information?  
22 A. Yes.  
23 Q. What individual patient  
24 information have you reviewed as part of your

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1 engagement?  
2 A. Well, if you'll look at the --  
3 there's a Butrans ad which involves -- which  
4 describes patients. There's other  
5 advertisements and medical information on --  
6 in other documents and published papers that  
7 relate to individual patient information.  
8 There's the Purdue marketing  
9 advertisements, and the counter  
10 advertisements where patients express their  
11 experience using OxyContin initially and then  
12 after they became addicted. So I reviewed  
13 those.  
14 There's other patient  
15 information involved, I think, in some of the  
16 call notes. For example, there's call  
17 notes -- oh, there's the death notice of the  
18 woman who took half of OxyContin and died of  
19 an overdose.  
20 So that's a medical report to  
21 the FDA by Purdue that includes patient  
22 information.  
23 So throughout the documents,  
24 there's a lot of information about patient

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1 histories.  
2 Q. Do you know the volume of  
3 medical literature that you considered, read,  
4 or reviewed in rendering your opinions in  
5 this engagement?  
6 A. By search I think it's about  
7 35,000 articles that I produced to you. So I  
8 searched over them, for example, for any  
9 documents that related to studies of the  
10 efficacy of narcotics, opioids for pain, and  
11 a variety of other topics. So I searched  
12 over all of those for most of the things I  
13 gave opinions on. And then the ones that  
14 came out, I read the abstracts. If I thought  
15 they were relevant, they got into the  
16 article.  
17 Q. And how did you conduct the  
18 search through the medical literature? Is  
19 that through a database?  
20 A. PubMed.  
21 Q. PubMed?  
22 A. PubMed.  
23 Q. And do you have any idea of the  
24 volume of documents that you've considered as

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1 part of this engagement?  
2 A. Well, it's 90 million documents  
3 of database. I did similar searches over the  
4 database. And then there's the 35,000  
5 articles in PubMed, and then there's  
6 additional documents that I reviewed  
7 available. Some web documents. Some --  
8 there were other documents I think that were  
9 produced in the litigation: the FDA  
10 meetings, the two reports on the FDA,  
11 government -- GAO report on the FDA. And  
12 there was another report on the FDA that I  
13 read. So there are other documents I read in  
14 addition to the database in the medical  
15 literature.  
16 And of course we did a -- we  
17 did a deep dive for that -- for that poster  
18 presentation. Trying to find all those  
19 citations because they weren't PubMed, and  
20 they -- we went to -- we went to like several  
21 different libraries to do that -- to do the  
22 dive for the Fishbain missing materials.  
23 MR. DONOHUE: I think now would  
24 be a good time to take a lunch break,

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1 if that's all right.  
2 MS. CONROY: Sure.  
3 THE VIDEOGRAPHER: Off the  
4 record at 12:24.  
5 (Recess taken, 12:23 p.m. to  
6 1:15 p.m.)  
7 THE VIDEOGRAPHER: We are back  
8 on the record at 1:16.  
9 THE WITNESS: Okay. I just  
10 wanted to let you know that exhibit --  
11 well, it's not an exhibit, but  
12 folder 20 here was additional bases  
13 for opinion that I forgot to mention.  
14 EXAMINATION  
15 BY MS. SAULINO:  
16 Q. Okay. Thank you, Dr. Egilman.  
17 So as you may have heard  
18 earlier, my name is Jennifer Saulino. I'm  
19 with a law firm called Covington & Burling,  
20 and I represent McKesson in this litigation.  
21 So you are just pointing to a  
22 folder that you have numbered as 20 that's in  
23 front of you, and you're saying now that that  
24 is additional bases for the opinions that you

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1 issued signed March 25th, 2019; is that  
2 right?  
3 A. Yes. That was a -- what I did  
4 was I added -- I had already given additional  
5 bases before. I omitted this. I added this  
6 to the additional bases.  
7 Q. And when did you determine that  
8 these additional bases existed?  
9 A. Sometime between when my report  
10 was written and today.  
11 Q. And you didn't feel the need to  
12 disclose them to the defendants until this  
13 moment?  
14 A. Correct.  
15 Q. Okay. Let's mark folder 20, as  
16 Exhibit --  
17 Can I have that, please?  
18 Thank you.  
19 (Whereupon, Deposition Exhibit  
20 Egilman 4, Green folder marked 20 -  
21 Distribute = Manufacturers, was marked  
22 for identification.)  
23 Q. (BY MS. SAULINO) So we've  
24 identified folder number 20 that was just

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1 identified by Dr. Egilman as Exhibit 4 to  
2 this deposition.  
3 That's all we have for that  
4 right now, Dr. Egilman.  
5 Dr. Egilman, in your report you  
6 detailed two methods that you used to form  
7 opinions in this case, the grounded theory  
8 approach and the evidence-based method. Is  
9 that right?  
10 A. Can you tell me where you are  
11 in the report.  
12 Q. Sir, you wrote the report. You  
13 know what methodology you relied upon?  
14 A. Yes. Can you tell me where in  
15 the report you're reading from?  
16 Q. Sir, do you recall relying on  
17 the grounded theory approach and the  
18 evidence-based method?  
19 A. Yes.  
20 Q. And those are the two  
21 methodologies that you detailed in your  
22 report. Correct?  
23 A. General methodologies for the  
24 report, yes.

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1 Q. And those are the only  
2 methodologies that you set forth in your  
3 report; correct?  
4 MS. CONROY: Objection.  
5 THE WITNESS: No, that's not  
6 correct.  
7 Q. (BY MS. SAULINO) You don't  
8 provide any other detail of any methodology  
9 anywhere in your report, do you?  
10 A. I don't think that's correct.  
11 Q. Where do you believe that you  
12 provide methodology?  
13 A. This whole discussion of EERW  
14 methodology, for example.  
15 There's other comments on, for  
16 example, the quality of the estimates of the  
17 number of pain patients. There are a variety  
18 of other report -- other opinions that  
19 include the methodologic discussions.  
20 Q. Okay. Doctor Egilman, you  
21 wrote this report; right?  
22 A. Yes.  
23 Q. Did you write it yourself?  
24 A. Yes.

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1 Q. And did the plaintiffs' lawyers  
2 help you write it?  
3 A. No.  
4 Q. Not at all?  
5 A. No.  
6 Q. And when you wrote this report,  
7 you chose, on pages -- starting at about  
8 38 -- do you have your report in front of  
9 you?  
10 A. I do. I'm on page 38.  
11 Q. Okay. It looks like I might be  
12 off by a page. 37.  
13 You start with a section called  
14 "Methodology." Am I reading that correctly?  
15 A. Correct.  
16 Q. Okay. And under your section  
17 called "Methodology," you start with the  
18 grounded theory approach; right? Which is --  
19 which starts on page 38.  
20 Under "State of the art  
21 methods"?  
22 A. Correct.  
23 Q. Okay. And then, if you go to  
24 page 40, you explain evidence-based method --

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1 evidence-based medicine methods; right?  
2 A. Yes.  
3 Q. Okay. In your methodology  
4 section, you do not detail any other  
5 methodologies, do you?  
6 A. That's correct.  
7 Q. Okay. So your methodology  
8 section of your report is incomplete?  
9 A. No.  
10 Q. So you only rely, then, on two  
11 methodologies in your report?  
12 A. No.  
13 MS. CONROY: Objection.  
14 Q. (BY MS. SAULINO) So your  
15 methodology section is inaccurate?  
16 A. No.  
17 Q. So where else did you detail  
18 your methodologies, Dr. Egilman?  
19 A. Well, I just gave you several  
20 other examples.  
21 Q. And why do you not detail them  
22 in the methodology section of your report,  
23 sir?  
24 A. Excuse me. Your question was

<p style="text-align: right;">Page 146</p> <p>1 where else do you --</p> <p>2 Q. Sir, are you reading the</p> <p>3 transcript of your own deposition right now?</p> <p>4 A. I'm reading your question.</p> <p>5 Q. Okay, sir. I can ask my</p> <p>6 question again. I'll just make it clear.</p> <p>7 A. I think you cut my answer off.</p> <p>8 That's my problem.</p> <p>9 Q. Sir, I'll withdraw the question</p> <p>10 that I asked and I'll ask a new one. Okay?</p> <p>11 A. That was my problem, is that</p> <p>12 you cut my answer off.</p> <p>13 Q. I'll withdraw it and ask a new</p> <p>14 one, then.</p> <p>15 A. Great.</p> <p>16 Q. Great. So in Section 3 of your</p> <p>17 report that you title "Methodology," you and</p> <p>18 I have already agreed that you only detailed</p> <p>19 two methodologies there; correct?</p> <p>20 A. In that section that outlines</p> <p>21 the general methodology for the report,</p> <p>22 correct.</p> <p>23 Q. Okay. And the other</p> <p>24 methodologies that you now say you also</p>	<p style="text-align: right;">Page 148</p> <p>1 methodological issues which are encompassed</p> <p>2 as part of evidence-based medicine.</p> <p>3 Q. So the overall methodology,</p> <p>4 though, that you were using for those</p> <p>5 opinions is evidence-based medicine method;</p> <p>6 correct?</p> <p>7 A. Correct. Which is --</p> <p>8 encompasses many subfields.</p> <p>9 Q. And what you're referring to as</p> <p>10 appearing, quote, later in your report are</p> <p>11 simply opinions; right?</p> <p>12 A. No, they're bases for opinions,</p> <p>13 when I talk about -- if you're talking about</p> <p>14 methods.</p> <p>15 Q. And you don't have anywhere</p> <p>16 else in your report where you lay out, "This</p> <p>17 is the methodology that I used in order to</p> <p>18 reach this opinion," do you?</p> <p>19 A. I don't think I used that form,</p> <p>20 but that's there in the substance.</p> <p>21 Q. Okay. Well, we'll look at some</p> <p>22 of that.</p> <p>23 Now, you have not documented in</p> <p>24 your report which opinion of your 490</p>
<p style="text-align: right;">Page 147</p> <p>1 relied on, you did not detail in the</p> <p>2 methodology section of your report, did you?</p> <p>3 A. That's correct. The specific</p> <p>4 criticism of some of the epidemiologic</p> <p>5 studies, approaches and other things were not</p> <p>6 in the methodology section per se, although</p> <p>7 they are encompassed by evidence-based</p> <p>8 medicine methods.</p> <p>9 Q. You don't explain that in the</p> <p>10 methodology section of your report, do you?</p> <p>11 A. I'm not sure that's correct.</p> <p>12 Q. You don't explain that you're</p> <p>13 adding other methodologies to your report in</p> <p>14 the evidence-based medicine methods section</p> <p>15 of your report, do you?</p> <p>16 A. No. Let me try to help you</p> <p>17 here.</p> <p>18 I think in evidence-based</p> <p>19 medicine, part of this report, the citations</p> <p>20 certainly, include epidemiology and</p> <p>21 epidemiologic methods.</p> <p>22 So some of the opinions later</p> <p>23 on in the report include more detailed</p> <p>24 discussion, particular epidemiological</p>	<p style="text-align: right;">Page 149</p> <p>1 opinions is based on which of the</p> <p>2 methodologies you lay out here, have you?</p> <p>3 A. Not directly by reference,</p> <p>4 correct.</p> <p>5 Q. There is no way to know, from</p> <p>6 looking at your report, which opinion is</p> <p>7 based on which method; correct?</p> <p>8 A. No.</p> <p>9 Q. Where have you listed that,</p> <p>10 sir?</p> <p>11 A. Well, in some cases if I'm</p> <p>12 discussing epidemiologic methodological</p> <p>13 issue, that would come under evidence-based</p> <p>14 medicine methods.</p> <p>15 Q. You don't say --</p> <p>16 A. That --</p> <p>17 Q. Go ahead, sir.</p> <p>18 A. In other parts of the report</p> <p>19 where I'm not dealing with a scientific issue</p> <p>20 but rather with an analysis of the ways</p> <p>21 companies influenced physicians, I'm using</p> <p>22 grounded methods in general.</p> <p>23 Q. Okay.</p> <p>24 A. In other words, when I discuss</p>



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1 minutes, memos, depositions, and review  
2 documents related to the corporate conduct,  
3 that would be under the general category of  
4 grounds or methodology.  
5 Q. What you just described is not  
6 written anywhere in your report, is it?  
7 A. Well, no, that's not correct.  
8 Q. Sir, nowhere in your report do  
9 you say this opinion is based on grounded  
10 theory approach, or this opinion is based on  
11 evidence-based medicine methodology; correct?  
12 A. By opinion, do you mean?  
13 Q. Correct.  
14 A. That's correct. I do not refer  
15 back to a particular -- to grounded theory  
16 when I use grounded theory in the report,  
17 that's correct.  
18 Q. So there's no way for anyone  
19 other than you to look at your report and  
20 know which methodology you used for each  
21 opinion; correct?  
22 A. Wrong.  
23 Q. Where in your report have you  
24 provided those bases?

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1 A. Well, the bases for grounded  
2 theory method is on page 38 and 39.  
3 Q. Sir, let me clarify my  
4 question.  
5 A. And in --  
6 Q. Let me clarify my question. I  
7 obviously was unclear.  
8 MS. CONROY: Let the witness  
9 finish the answer before you start  
10 another question.  
11 MR. DONOHUE: Then I will  
12 withdraw the question and clarify it.  
13 MS. CONROY: And withdraw it by  
14 not interrupting the witness.  
15 Q. (BY MS. SAULINO) Sir, you just  
16 answered in response to my question that  
17 nowhere in your report do you -- is there any  
18 way to know which opinion is based on which  
19 method. You said no. Correct?  
20 A. I don't think that's correct.  
21 Q. Okay.  
22 A. Certainly -- I don't know  
23 which -- you asked about eight related  
24 questions. The previous question was not the

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1 question that you just asked. You withdrew  
2 the previous question, and the question --  
3 two above that -- I can't see. I don't think  
4 it's the question that would relate to the  
5 question you just asked.  
6 Q. If another expert were to take  
7 your report and pick it up, they cannot, by  
8 reading your report, know which methodology  
9 you used for each opinion; correct?  
10 A. No.  
11 Q. That's not correct?  
12 A. That is not correct.  
13 Q. Why do you say that's not  
14 correct?  
15 A. Because anybody familiar with  
16 grounded theory methods -- and I give you  
17 some examples of papers -- could recognize  
18 the --  
19 Let me give you -- try to give  
20 you an example.  
21 Q. Sir, I don't want an example.  
22 I just want an answer to my question.  
23 MS. CONROY: Let the witness  
24 answer the question.

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1 MS. SAULINO: I am asking for  
2 an answer to my question. I don't  
3 want an example, just an answer to my  
4 question.  
5 THE WITNESS: Okay. That's too  
6 bad. I'm going to give you an  
7 example.  
8 MS. SAULINO: Sir, I will  
9 object to you -- I will object to the  
10 discourse here. You can provide that  
11 information on your own counsel's  
12 time. I would like an answer to my  
13 question.  
14 THE WITNESS: I'm giving you an  
15 answer to your question.  
16 SPECIAL MASTER COHEN: Why  
17 don't you reread the question to the  
18 witness and see if he can answer it at  
19 least first without an example.  
20 Q. (BY MS. SAULINO) Sir, I asked  
21 you if another expert were to take your  
22 report and pick it up, they cannot, by  
23 reading your report, know which methodology  
24 you used for each opinion, correct?

<p style="text-align: right;">Page 154</p> <p>1 And you said no. 2 And I asked you, why do you say 3 that's not correct? 4 A. I say that's not correct 5 because an expert who is familiar with 6 grounded methods will recognize which 7 opinions in this report were based in 8 grounded methods rather than something else. 9 Like math. 10 Q. So, sir, what you're saying is 11 that if there is an opinion in this report 12 that's based on math, then it's not based on 13 the grounded theory approach? 14 A. That was exactly the example I 15 was going to give, yes. 16 Q. And, sir, nowhere in your 17 report do you lay out which opinion uses 18 which method, do you? 19 A. Not explicitly. 20 Q. Now, I want to start with the 21 evidence-based medicine method. I'd like to 22 ask you some questions about your 23 methodology; okay? 24 You say that the first step in</p>	<p style="text-align: right;">Page 156</p> <p>1 A. You read them directly from the 2 report, but your initial framing was 3 incorrect. 4 Q. Well, sir, I'm looking at the 5 section, if you start on page 40, that is 6 titled "Step 1, translation of uncertainty 7 into" answerable -- into "an answerable 8 question." Right? 9 A. Yes. 10 Q. Okay. And then you go through 11 your explanation of what generally answerable 12 questions are, and then you say, "I asked the 13 following background questions." And you 14 list one question. "What are the treatment 15 options for chronic non-cancer pain"; right? 16 A. Right. 17 Q. And you say, "I asked the 18 following foreground questions," and you list 19 one question, and it is, "In patients with 20 chronic non-cancer pain, how do opioids and 21 NSAIDs compare in terms of efficacy and 22 adverse effects?" Right? 23 A. Yes. 24 Q. That's an accurate reading of</p>
<p style="text-align: right;">Page 155</p> <p>1 the evidence-based medicine method is the 2 development of answerable questions; right? 3 A. Yes. 4 Q. And you developed two such 5 questions; right? 6 A. I'm not sure what you're 7 referring to. 8 Q. I'm referring to the answerable 9 questions that you developed in your report. 10 A. Yes. 11 Q. The top of page 41? 12 A. Right. 13 Q. "What are the treatment options 14 for chronic non-cancer pain?" Is your first. 15 And your second is "In patients with chronic 16 non-cancer pain, how do opioids and NSAIDs 17 compare in terms of efficacy and adverse 18 effects?" 19 I read those correctly; right? 20 A. Yeah, but you took them out of 21 context. You took that -- that question is 22 out of context. 23 Q. Sir, I read those directly from 24 your report, didn't I?</p>	<p style="text-align: right;">Page 157</p> <p>1 your report; right? 2 A. Of that section of the report. 3 Q. Okay. So those are the two 4 answerable questions that you developed for 5 your report. 6 A. No. 7 Q. You developed additional 8 answerable questions that you didn't list in 9 your report? 10 MS. CONROY: Objection. 11 THE WITNESS: I had an 12 assignment which I gave you, and that 13 was the -- that was the answerable 14 question that I was addressing in the 15 report. 16 These two questions, as you can 17 see by the framing that I put on them, 18 are background questions. 19 Q. (BY MS. SAULINO) So your 20 answerable question was not developed by you. 21 It was an assignment given to you by 22 plaintiff lawyers? 23 A. Well, it was jointly discussed 24 and developed by me and them together, yes.</p>

<p style="text-align: right;">Page 158</p> <p>1 Q. As you explain the  2 evidence-based medicine method, you say that  3 it is an evidence that is an approach --  4 A. Can you tell me where you're  5 reading from so I can follow?  6 Q. I'm reading your words, sir.  7 A. I know. But --  8 Q. Page 40 at the top.  9 "It is an approach to medical  10 decision-making meant to integrate individual  11 clinical expertise with the best available  12 external clinical evidence from systematic  13 research"; right?  14 A. I don't think you read that  15 correctly.  16 Q. What do you think that I was  17 mistaken about?  18 A. Well, I'm looking at what she  19 transcribed and what I'm reading and it's  20 different.  21 I couldn't catch up to the  22 beginning. That's why I asked you where you  23 were. But you kept reading and I couldn't  24 follow the language.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. (BY MS. SAULINO) Yes, it is,  2 sir, and I'm trying to --  3 A. If you leave a word out or  4 something and I miss it, that's bad. I  5 want -- so I want to read it.  6 Q. Right. Because if I left a  7 word out, then it might be that someone  8 reading it later on wouldn't be able to  9 understand the full basis of your opinions;  10 right?  11 A. Anything's possible, but, for  12 example, when you left the framing of the  13 background questions out of what you did  14 before, that was completely misleading.  15 So you might leave a word out,  16 it might not make a difference. I don't  17 know. But I'd rather not take a chance.  18 Q. Sir --  19 A. That's why if you're going to  20 read something, I'd like to know where you're  21 reading so I can follow it.  22 Q. Sir, it sounds like you would  23 agree with me that it's very important that  24 we be able to look at your report, read it,</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Did you hear my question, sir?  2 A. Yeah, but your question was  3 whether you read it correctly. In order to  4 know whether you read it correctly, I need to  5 read it. And I need to listen to what you're  6 saying.  7 Q. Sir, I actually didn't ask you  8 whether I read it correctly. I just asked  9 you whether that was the approach that you  10 described in your report.  11 A. Well, you read it and then said  12 that. And so in order to know whether it was  13 correctly described, I need to read it.  14 Q. You don't remember what  15 approach you used in your report, sir?  16 A. Generally, I do.  17 MS. CONROY: Objection.  18 THE WITNESS: But you're asking  19 a specific quote, or attempting to  20 quote it. I don't know if you're  21 correctly quoting or not. And I need  22 to read it to see if you're correctly  23 quoting.  24 This is serious business.</p>	<p style="text-align: right;">Page 161</p> <p>1 understand the bases for your opinions and  2 methodology, and then replicate it; right?  3 That's what any good expert would do.  4 MS. CONROY: Objection.  5 THE WITNESS: Okay. Well,  6 there's two questions there. Which do  7 you want me to answer?  8 Q. (BY MS. SAULINO) Why don't you  9 pick, sir?  10 A. I don't know.  11 Q. Sir, according to you,  12 "Evidence-Based Medicine" -- I'm at the top  13 of page 40 again -- "is an approach to  14 medical decision-making meant to integrate  15 individual clinical expertise with the best  16 available external clinical evidence from  17 systematic research"; right?  18 A. Correct. With quotes between  19 individual and research -- I think it's a  20 David Sackett quote.  21 Q. Are you agreeing with  22 Mr. Sackett, Dr. Sackett?  23 A. I am.  24 Q. Okay.</p>

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1 And the practice of  
2 evidence-based medicine can be outlined in  
3 five basic steps; right?  
4 A. Yes.  
5 Q. The translation of uncertainty  
6 to an answerable question is the first step;  
7 right?  
8 A. That's the one he numbered  
9 number one.  
10 Q. Okay. And that is one of the  
11 steps that should be done by the clinical  
12 expert; right?  
13 MS. CONROY: Objection.  
14 THE WITNESS: If possible.  
15 It's not always possible.  
16 Q. (BY MS. SAULINO) Are you  
17 saying that was not possible in this case?  
18 A. No. I'm saying it's not always  
19 possible. You asked a general question, you  
20 get a general answer.  
21 Q. Okay. And it was possible in  
22 this case for you, as the clinical expert, to  
23 translate uncertainty to an answerable  
24 question. Right?

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1 A. To the extent that there was  
2 uncertainty, yes.  
3 Q. Okay. But you didn't do that  
4 yourself. The plaintiffs' lawyers handled  
5 that for you; right?  
6 A. No.  
7 Q. Well, I'm basing this on your  
8 testimony just a couple of minutes ago. You  
9 told me that your answerable question here  
10 was the assignment you were given by  
11 plaintiffs' lawyers; right?  
12 A. No.  
13 MS. CONROY: Objection.  
14 THE WITNESS: I said it was an  
15 assignment that we discussed and  
16 talked about and agreed to together.  
17 Q. (BY MS. SAULINO) When was that,  
18 sir?  
19 A. That was discussed three months  
20 ago.  
21 Q. You don't remember when?  
22 A. No.  
23 Q. Okay. So it wasn't an  
24 assignment; it was an agreed-to research?

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1 A. The same difference, to me.  
2 Q. Okay. And that was the only  
3 question that you were trying to answer here?  
4 A. That was the only question I  
5 was asked to answer here. There may have  
6 been other questions that came up that were  
7 also answered.  
8 Q. Okay. And precisely what was  
9 that question, just so we have it here in  
10 your methodology?  
11 A. I was asked to determine within  
12 a reasonable degree of medical and scientific  
13 certainty whether or not various defendants  
14 working together and/or separately were  
15 significant factors in causing the opioid  
16 epidemic.  
17 Q. Okay. Let's mark that as an  
18 exhibit.  
19 (Whereupon, Deposition Exhibit  
20 Egilman 5, My Assignment, was marked  
21 for identification.)  
22 Q. (BY MS. SAULINO) And again,  
23 the way that you just stated that, it says,  
24 "I was asked"; right?

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1 A. That's correct.  
2 Q. Okay. So we've marked as  
3 Exhibit 5, what you've titled "My  
4 Assignment," which you just read into the  
5 record.  
6 And just so we're clear, you  
7 didn't record that question in your report;  
8 right?  
9 A. That's correct.  
10 Q. Why did you not put that in  
11 your report?  
12 A. No reason --  
13 Q. You didn't --  
14 A. -- in particular.  
15 Q. You didn't think it was  
16 important to put down the answerable question  
17 that was step 1 in your evidence-based  
18 medicine method?  
19 A. That's correct.  
20 Q. And then you added your  
21 background and foreground question; correct?  
22 A. Correct.  
23 Q. Your background question is  
24 "What are the treatment options for chronic

<p style="text-align: right;">Page 166</p> <p>1 non-cancer pain?" Right?</p> <p>2 A. Correct.</p> <p>3 Q. Your foreground question is "In</p> <p>4 patients with chronic non-cancer pain, how do</p> <p>5 opioids and NSAIDs compare in terms of</p> <p>6 efficacy and adverse effect?" Right?</p> <p>7 A. Correct.</p> <p>8 Q. Neither of those answers the</p> <p>9 question whether or not various defendants</p> <p>10 working together or separately were</p> <p>11 significant factors in causing the opioid</p> <p>12 epidemic; correct?</p> <p>13 A. Not by themselves, but they are</p> <p>14 a part of the answer.</p> <p>15 MS. CONROY: Objection.</p> <p>16 Q. (BY MS. SAULINO) You don't list</p> <p>17 any other background or foreground questions</p> <p>18 that you were exploring; correct?</p> <p>19 A. That's correct.</p> <p>20 Q. So there's no way for us to</p> <p>21 know what those were?</p> <p>22 A. Correct.</p> <p>23 Q. Now, your next step is</p> <p>24 systematic retrieval of best evidence</p>	<p style="text-align: right;">Page 168</p> <p>1 medical evidence; right?</p> <p>2 You say, "I conducted computer</p> <p>3 searches of several different databases";</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And then you say, "I also</p> <p>7 searched corporate records for unpublished</p> <p>8 studies"; right?</p> <p>9 A. Yes.</p> <p>10 Q. And then you identify some</p> <p>11 search terms that you used; right?</p> <p>12 A. Yes.</p> <p>13 Q. Those are the only sources that</p> <p>14 you list under step 2; right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. So you're now adding to</p> <p>17 the sources that you used under step 2?</p> <p>18 A. I'm not sure what you mean by</p> <p>19 "adding to sources."</p> <p>20 Q. Well, you said "and</p> <p>21 depositions, and other documents." Those</p> <p>22 aren't listed here in step 2; right?</p> <p>23 A. No. They're listed elsewhere.</p> <p>24 Other -- as I said, all of the government</p>
<p style="text-align: right;">Page 167</p> <p>1 available; right?</p> <p>2 A. Correct.</p> <p>3 Q. You say, "Once an answerable</p> <p>4 question has been posed, the researcher must</p> <p>5 select an evidence resource, execute a search</p> <p>6 strategy, and then evaluate the evidence</p> <p>7 summary"; right?</p> <p>8 A. Correct.</p> <p>9 Q. And you say your evidence</p> <p>10 resource included medical literature and</p> <p>11 company documents; right?</p> <p>12 A. And depositions.</p> <p>13 Q. Okay.</p> <p>14 And you --</p> <p>15 A. And other documents. I think I</p> <p>16 mentioned that already. Institute of</p> <p>17 Medicine reports, FDA reports, GAO reports.</p> <p>18 Those are all probably incorporated into</p> <p>19 company documents as well.</p> <p>20 Q. I'm looking at step 2 that</p> <p>21 you've listed in your report.</p> <p>22 And here under "Systematic</p> <p>23 retrieval of the best evidence available,"</p> <p>24 you first list where you went to review</p>	<p style="text-align: right;">Page 169</p> <p>1 documents I relied on I believe were also</p> <p>2 corporate documents, but I wanted to</p> <p>3 distinguish to be clear. They weren't</p> <p>4 generated by the companies but the companies</p> <p>5 had them.</p> <p>6 So that's a distinction without</p> <p>7 a difference.</p> <p>8 Depositions, I didn't include</p> <p>9 them, but I think I included them in the</p> <p>10 introductory materials before this section in</p> <p>11 this report. I think they're on the first or</p> <p>12 second page.</p> <p>13 Q. You did. But here, where you</p> <p>14 talked about your systematic retrieval of the</p> <p>15 best evidence available, you didn't list</p> <p>16 them, did you?</p> <p>17 A. Correct. I only listed them at</p> <p>18 the beginning. It was a mistake. I should</p> <p>19 have relisted depositions here.</p> <p>20 Q. Okay. And let's look at your</p> <p>21 reference to corporate records here on</p> <p>22 page 41.</p> <p>23 A. Okay.</p> <p>24 Q. You say, "In addition to</p>



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1 published evidence, I also searched corporate  
2 records for unpublished studies"; right?  
3 A. Right.  
4 Q. Not for anything else; right?  
5 A. No. I searched for all kinds  
6 of other things.  
7 Q. Well, you qualify it here by  
8 saying you simply searched corporate record  
9 for unpublished studies in step 2 of your  
10 evidence-based methodology, don't you?  
11 A. Yeah, but if you look at the  
12 search terms, it's obvious I was searching  
13 for other things.  
14 Q. Sir, there's nothing obvious  
15 about that. Those search terms could easily  
16 be found in unpublished studies, couldn't  
17 they?  
18 MS. CONROY: Objection.  
19 THE WITNESS: I don't think so.  
20 Q. (BY MS. SAULINO) So it's your  
21 testimony --  
22 A. Not all of them. I don't think  
23 so.  
24 Q. So it's your testimony, sir,

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1 that while you didn't say that you used more  
2 than one -- that you used corporate records  
3 for more than unpublished studies, and in  
4 fact said exactly the opposite here, we  
5 should have known based on the search terms  
6 you listed? That's your testimony?  
7 A. No. I think elsewhere in the  
8 report I explained that I reviewed all of the  
9 documents in the repository, and I said that  
10 in that section. It says, "I have accessed  
11 the entire repository documents." Okay? And  
12 so the -- the -- it says, "In addition to  
13 published literature, I also searched  
14 corporate records for unpublished studies."  
15 There's a period. And then "I also had  
16 access to the entire repository documents  
17 listed in this litigation." Another period.  
18 So the rest of that paragraph  
19 or bullet points in the bullet points of 42,  
20 are the other topics for which I searched the  
21 entire database.  
22 Q. Sir, with respect --  
23 A. Not respective of whether or  
24 not they were an unpublished study.

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1 Q. Sir, with respect, that's not  
2 what that paragraph says, is it?  
3 A. Well, with respect, it is what  
4 it says.  
5 Q. Sir, you say you "searched  
6 corporate records for unpublished studies."  
7 You then list the corporate records that you  
8 searched, and you list the search terms that  
9 you used in order to find unpublished  
10 studies. That is what you say in your  
11 report; right?  
12 MS. CONROY: Objection.  
13 THE WITNESS: No. The second  
14 sentence says, "I have had access to  
15 the entire repository of documents  
16 produced in the litigation," and it  
17 goes through what documents -- who  
18 provided those documents, and then it  
19 also has another sentence, okay?  
20 Which includes the search terms,  
21 without reference or limitation, to  
22 published studies. Unpublished  
23 studies.  
24 Q. (BY MS. SAULINO) You'd agree

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1 with me all of that is qualified by the  
2 paragraph that you start with that  
3 specifically identifies unpublished studies  
4 as what you were looking for?  
5 A. I do not agree with you,  
6 because that is a second -- a different  
7 sentence.  
8 Q. Okay.  
9 A. I had a "none" once and I'd  
10 have to defer to the "none" as to whether or  
11 not the sentence before the definition of  
12 search terms is an independent clause rather  
13 than the initial paragraph which is separated  
14 from that sentence by a list of companies  
15 whose documents were produced.  
16 Q. Let's look at your search  
17 terms, sir.  
18 You would agree with me that  
19 it's important to get key terms right,  
20 because otherwise you might miss relevant  
21 documents in your searches?  
22 A. Well, if you limit it to terms,  
23 that would be true. I didn't limit it to  
24 those terms.

<p style="text-align: right;">Page 174</p> <p>1 Q. So there are other terms that</p> <p>2 you used that you did not list here in your</p> <p>3 report?</p> <p>4 A. Sure. It's an iterative</p> <p>5 search. I mentioned the -- when the lawyer</p> <p>6 for Insys was asking. We did all kinds of</p> <p>7 sex terms. And I didn't mention that in here</p> <p>8 either. This is an iterative process.</p> <p>9 That's what grounded theory is. You find</p> <p>10 something, then you pursue other things</p> <p>11 related to what you found. And you do a</p> <p>12 variety of searches based on what you find in</p> <p>13 previous searches.</p> <p>14 Q. Sir, I'm looking at the</p> <p>15 evidence-based medicine methodology right</p> <p>16 now, not the grounded theory methodology.</p> <p>17 A. That's fine. I'm just telling</p> <p>18 you what -- that that's what I did. The</p> <p>19 grounded theory applies to how I reviewed</p> <p>20 this evidence-based medicine. Remember,</p> <p>21 evidence-based medicine is pretty much</p> <p>22 limited to evidence, not as it's written. So</p> <p>23 I'm adopting that method as a basis for using</p> <p>24 grounded theory method, which allows me to do</p>	<p style="text-align: right;">Page 176</p> <p>1 A. Well, I discussed them all with</p> <p>2 the staff, so we had a group discussion. But</p> <p>3 I think pretty much these are mine.</p> <p>4 Q. Okay.</p> <p>5 And --</p> <p>6 A. It could be that one of my</p> <p>7 staff suggested one or another one.</p> <p>8 Q. And you just told me there are</p> <p>9 a number of other terms that you used; right?</p> <p>10 A. Sure.</p> <p>11 Q. But you don't list them here?</p> <p>12 A. Correct.</p> <p>13 Q. And you don't list them</p> <p>14 anywhere else in the report?</p> <p>15 A. That's correct.</p> <p>16 Q. And so there's no way for us to</p> <p>17 know what other search terms you used; right?</p> <p>18 A. That's correct.</p> <p>19 Q. Now, is it the case --</p> <p>20 A. I got a list of the sex terms,</p> <p>21 I think.</p> <p>22 Q. Sir, I understand that you want</p> <p>23 to talk about the sex terms, but I'd like to</p> <p>24 talk about your report.</p>
<p style="text-align: right;">Page 175</p> <p>1 a broader analysis beyond the confines of</p> <p>2 published medical evidence.</p> <p>3 Q. And what you just said is not</p> <p>4 written anywhere in your report, is it?</p> <p>5 A. That's correct.</p> <p>6 Q. So there was no way for us to</p> <p>7 know that until you just told me right now;</p> <p>8 right?</p> <p>9 A. No. Not at all.</p> <p>10 Q. Now, you said that -- you say</p> <p>11 in your report, "I initially searched the</p> <p>12 sources above for" --</p> <p>13 A. Wait. Will you tell me where</p> <p>14 you're reading from?</p> <p>15 Q. Page 42, your words, sir.</p> <p>16 A. Okay. Go ahead.</p> <p>17 Q. "I initially searched the</p> <p>18 sources above for key terms identified by me</p> <p>19 including," and you list them; right?</p> <p>20 A. Correct.</p> <p>21 Q. You identified these terms</p> <p>22 yourself?</p> <p>23 A. Correct.</p> <p>24 Q. No one helped you?</p>	<p style="text-align: right;">Page 177</p> <p>1 MS. CONROY: Objection.</p> <p>2 Q. (BY MS. SAULINO) So you list</p> <p>3 here a set of terms; right?</p> <p>4 Is it fair to say that these</p> <p>5 are the first terms that you put through the</p> <p>6 database?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So your initial search</p> <p>9 was based on these terms; right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then from there, you</p> <p>12 added additional terms after?</p> <p>13 A. Sure.</p> <p>14 Q. Okay. So, isn't it true that</p> <p>15 anything that wouldn't be caught by these</p> <p>16 initial search terms, you then wouldn't have</p> <p>17 later reviewed?</p> <p>18 A. No.</p> <p>19 Q. So you did the initial search</p> <p>20 over again with additional terms?</p> <p>21 A. You can only do an initial</p> <p>22 search once, so the answer to that is no.</p> <p>23 Q. I'm asking you about your</p> <p>24 process, sir.</p>

<p style="text-align: right;">Page 178</p> <p>1 Do you have any way to describe  2 the process that you used with your initial  3 search terms?  4 A. Sure. You get -- you do the  5 initial search, you read the documents.  6 Then, for example, if you find -- let's say  7 you find some document with Sade name on it.  8 Okay? So then you do a search by Sade's  9 name, because you want to know what else Sade  10 is involved in.  11 Or you find Katz's name. So  12 you put Katz name in. What else can you find  13 out about Katz. Or you do a search and  14 you'll find the word "impact." And then you  15 do a search by impact.  16 So you search by individual  17 names, you search by entities, you -- you  18 know, then you find the American Pain  19 Foundation and the result. And then you do a  20 search by that. And then if you find  21 something in those documents, you do  22 subsequent searches. It's an iterative  23 process.  24 Q. Okay. I understand that you're</p>	<p style="text-align: right;">Page 180</p> <p>1 the time frame, have considered  2 important to evidence. But which now  3 turns out to be a whole subfield of  4 evidence. So you have to combine them  5 both.  6 Q. (BY MS. SAULINO) What you have  7 just been referring to as evidence in your  8 answer, you mean by that data generated from  9 quantitative studies; right?  10 A. In part.  11 Q. I'm trying to understand your  12 previous answer, sir. And you said you used  13 the evidence-based medicine approach  14 primarily for evidence, but then you  15 explained that you had to incorporate the  16 grounded theory method for things that aren't  17 typically a part of evidence.  18 And so I'm trying to understand  19 what evidence is to you.  20 A. Well, everything in my report  21 is evidence, if you want a short answer. The  22 bases of my opinions are evidence, that  23 support my opinions. But in this particular  24 case, if you want this distinction, mostly in</p>
<p style="text-align: right;">Page 179</p> <p>1 saying it is an iterative process, which is  2 the grounded theory approach; right?  3 A. Yes.  4 Q. And you used the grounded  5 theory method in combination with the  6 evidence-based medicine approach? Is that  7 what we're now understanding?  8 MS. CONROY: Objection.  9 THE WITNESS: I used the  10 evidence-based medicine approach  11 primarily for evidence, but I  12 incorporated aspects of the  13 evidence-based approach in the  14 grounded theory method. Because some  15 of what I was doing in evidence-based  16 medicine was looking at evidence. In  17 order to understand some of the  18 development of evidence, you have to  19 use grounded theory. Particularly  20 when you're looking at manipulation of  21 study data, or influencing  22 researchers, things that are not  23 within the four corners of what  24 Sackett and others would generally, at</p>	<p style="text-align: right;">Page 181</p> <p>1 medicine, you're looking at, say, a  2 randomized controlled trial. Let's look at  3 the Roth study.  4 So you look at the Roth study.  5 Q. Sir, I don't need an example,  6 just an answer to the question.  7 MS. CONROY: Please don't  8 interrupt the witness when he's in the  9 middle of a --  10 SPECIAL MASTER COHEN: She's  11 allowed to say that.  12 THE WITNESS: Okay. Well, your  13 question was -- and so I'm trying to  14 understand what evidence is to you.  15 Okay? So --  16 Q. (BY MS. SAULINO) And I think  17 you've answered that, sir. You were about to  18 give an example, but you had answered it;  19 right?  20 MS. CONROY: Objection.  21 THE WITNESS: I gave an  22 incomplete answer, but the judge has  23 ruled so you can go on.  24 SPECIAL MASTER COHEN: So just</p>

<p style="text-align: right;">Page 182</p> <p>1 let me just step in there and offer an  2 observation. This is a discovery  3 deposition. It's not de bene esse.  4 You're not testifying in court. If  5 you were testifying in court, you  6 would be allowed to give a complete  7 answer. You would be allowed to  8 finish your answer.  9 But this is a discovery  10 deposition, and they control what it  11 is they want to discover, including,  12 as I said earlier, a decision not to  13 discover some things, for example, the  14 examples you want to give to better  15 explain your answer.  16 That's their choice.  17 So she is allowed to say, all I  18 want is a "yes" or "no" answer, even  19 if it's not really a "yes" or "no"  20 answerable question. Okay?  21 THE WITNESS: Well, Your Honor,  22 if she'd asked the yes-or-no question,  23 I would give a "yes" or "no" answer.  24 Her question was --</p>	<p style="text-align: right;">Page 184</p> <p>1 Your Honor. Thank you.  2 Q. (BY MS. SAULINO) Let's move on  3 to step 3. "Critical appraisal of evidence  4 for quality clinical relevance and  5 applicability." I'm on page 42 where we just  6 were.  7 A. Sure.  8 Q. Okay. You say, "First, the  9 researcher must consider the type of study  10 returned." Right?  11 A. Yes.  12 Q. "And different guidelines may  13 be used to critically appraise different  14 types of studies"; right?  15 A. Yes.  16 Q. "I used each of these where  17 appropriate to inform my analysis"; right?  18 A. Yes.  19 Q. And then you have following for  20 a couple of pages a list of about 32  21 questions; right?  22 A. I didn't count them, but I'll  23 take your word for it.  24 Q. Okay. Now, you say, as we just</p>
<p style="text-align: right;">Page 183</p> <p>1 SPECIAL MASTER COHEN: In that  2 case --  3 THE WITNESS: My interpretation  4 of what evidence-based evidence was.  5 She didn't ask a yes-or-no question.  6 SPECIAL MASTER COHEN: I agree  7 with you in that case. There are  8 questions she has asked which are  9 "yes" or "no" answers.  10 THE WITNESS: And I tried to  11 answer them all "yes" or "no."  12 SPECIAL MASTER COHEN: I'm just  13 giving you guidance. I'm not scolding  14 you. I'm trying to make this go more  15 smoothly.  16 THE WITNESS: I understand.  17 SPECIAL MASTER COHEN: I will  18 also add that there are certain  19 courtesies that you can give to the  20 deponent, such as telling him what  21 page you're reading from, and perhaps  22 asking with less vigor some of your  23 questions.  24 MS. SAULINO: Fair enough,</p>	<p style="text-align: right;">Page 185</p> <p>1 read, "I used each of these where appropriate  2 to inform my analysis"; right?  3 A. Yes.  4 Q. You don't anywhere in your  5 report provide any indication of which  6 questions were used to inform your analysis  7 for which opinion; right?  8 A. Not by number. That's correct.  9 But I did refer to certain of these in  10 certain opinions.  11 Q. So unless we see one of these  12 questions listed as the basis for one of your  13 opinions, there's no way for us to know which  14 questions you used in order to form that  15 opinion; right?  16 MS. CONROY: Objection.  17 THE WITNESS: No.  18 Q. (BY MS. SAULINO) I'm not  19 right?  20 A. You are not correct.  21 Q. Okay. What is not correct  22 about what I just said?  23 A. In some cases, in some  24 opinions, I have made explicit reference to</p>

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1 some of the questions in pages 42 to 45.  
2 In other cases, if you were  
3 well-versed in epidemiology or in analysis of  
4 medical literature, you could know when I was  
5 using one of these methods, even if I didn't  
6 explicitly refer to a particular technique.  
7 Q. All right. But unless you  
8 actually list it as one of -- as a part of  
9 the bases for your opinions, there are -- I  
10 agree with you, there are some where you do  
11 list a question or some questions as part of  
12 the bases for your opinion; right? As you  
13 just said.  
14 You and I are agreeing, sir.  
15 A. I know. I'm just trying to  
16 understand. I'm trying to read the --  
17 Yes.  
18 Q. Okay.  
19 A. Yes.  
20 Q. So unless you've listed it,  
21 there's no way for us to know for sure what  
22 questions you were using for your critical  
23 appraisal of evidence for validity of  
24 clinical relevance and applicability; right?

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1 MS. CONROY: Objection.  
2 THE WITNESS: No.  
3 Q. (BY MS. SAULINO) And you say  
4 no because if we are versed in epidemiology,  
5 we should be able to figure out precisely  
6 which questions you were using; right?  
7 MS. CONROY: Objection.  
8 THE WITNESS: In part. You  
9 also have an opportunity for 14 hours  
10 today and tomorrow to ask anything you  
11 want about them what relates to what.  
12 Q. (BY MS. SAULINO) I see. But  
13 you didn't see that it was necessary to spell  
14 that out in your report; right?  
15 A. I -- that's correct. I didn't  
16 think I needed to reference a particular  
17 question to a particular opinion.  
18 Q. Now, you list more than  
19 36,000 pieces of literature in Exhibit C;  
20 right?  
21 A. Yes.  
22 Q. You certainly didn't go through  
23 this critical analysis for all 36,000-plus  
24 pieces of literature there, did you?

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1 A. That's correct.  
2 Q. There is no way for us to know  
3 which pieces of literature of those 36,000  
4 you did use the critical analysis for; right?  
5 A. Not by reading the report,  
6 that's correct.  
7 Q. So if an expert, for instance,  
8 for the defendants, wanted to take your  
9 report and replicate your work in that  
10 regard, there's no way to do that; right?  
11 MS. CONROY: Objection.  
12 THE WITNESS: No.  
13 Q. (BY MS. SAULINO) Not based on  
14 your report, is there?  
15 A. Sure there is. They could go  
16 through the literature and see if I missed  
17 something as a basis of an opinion for --  
18 I mean, most of that literature  
19 I was looking at, these questions related to  
20 whether or not opioids were effective for  
21 chronic pain. That was a big issue.  
22 And the big issues would be  
23 easy to check. We just searched that  
24 database for chronic non-malignant pain

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1 opioids, you won't find much in those  
2 searches. Somebody could do that search and  
3 see if I missed it. That's one example.  
4 Q. Sir, the searching the database  
5 for chronic -- I'm sorry, what was --  
6 A. Chronic non-malignant pain.  
7 Q. Non-malignant pain and opioids  
8 is not one of the questions that's listed  
9 here that you used where appropriate for your  
10 critical appraisal; right?  
11 A. That specific question is not  
12 there, but it's in the opinions.  
13 Q. Okay. So you used additional  
14 questions to make your critical appraisal?  
15 A. Sure. Those are just the  
16 background questions.  
17 Q. I see. But you would agree  
18 with me that on page 42, under step 3 --  
19 A. Right.  
20 Q. -- you say, "I used each of  
21 these where appropriate to inform my  
22 analysis," and then you follow that with  
23 several pages of questions; right?  
24 A. Are we on the -- you're at



<p style="text-align: right;">Page 190</p> <p>1 page 42?</p> <p>2 Q. Mm-hmm.</p> <p>3 A. 333.1?</p> <p>4 Q. I was reading the sentence that</p> <p>5 just precedes 333.1.</p> <p>6 A. Right.</p> <p>7 Q. Okay. So when you -- when you</p> <p>8 indicated here in your report, "I used each</p> <p>9 of these where appropriate to inform my</p> <p>10 analysis" and followed that with several</p> <p>11 pages of the types of questions that you used</p> <p>12 where appropriate, you didn't think it was</p> <p>13 necessary -- it was important to put in all</p> <p>14 of the questions that you were using?</p> <p>15 A. Correct.</p> <p>16 Q. And nowhere is that written</p> <p>17 down? All the questions that you were using?</p> <p>18 A. Correct.</p> <p>19 Q. Okay.</p> <p>20 Now, the searches that you ran</p> <p>21 on the 36,292 pieces of medical literature</p> <p>22 that you list on Exhibit C, did you run those</p> <p>23 searches yourself?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 192</p> <p>1 A. Correct.</p> <p>2 Q. Now, earlier you said that</p> <p>3 you've spent 384 hours on this litigation;</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 Q. How many of those 384 hours did</p> <p>7 you use for this running of search terms,</p> <p>8 iteratively rerunning them and reviewing</p> <p>9 critically the published literature that</p> <p>10 resulted?</p> <p>11 A. No idea.</p> <p>12 Q. Can you give me any kind of</p> <p>13 estimate?</p> <p>14 A. No.</p> <p>15 Q. Do you remember doing it at</p> <p>16 all?</p> <p>17 A. Sure.</p> <p>18 Q. And about how many hours do you</p> <p>19 remember doing it?</p> <p>20 A. I don't remember how many</p> <p>21 hours.</p> <p>22 Q. Do you know how many pieces of</p> <p>23 literature you ultimately reviewed</p> <p>24 critically?</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. All of them?</p> <p>2 A. Yes.</p> <p>3 Q. So you didn't rely on your</p> <p>4 students or staff for those searches?</p> <p>5 A. No, they checked some of it.</p> <p>6 Q. And once the results were</p> <p>7 returned, you reviewed the abstracts, study</p> <p>8 descriptions or results to determine whether</p> <p>9 each study addressed your questions; right?</p> <p>10 A. Correct.</p> <p>11 Q. And you did that with respect</p> <p>12 to everything that was returned by your</p> <p>13 search terms?</p> <p>14 A. Correct.</p> <p>15 Q. Do you know how many pieces of</p> <p>16 medical literature were returned by your</p> <p>17 search terms?</p> <p>18 A. No.</p> <p>19 Q. But you do know that you</p> <p>20 reviewed them all yourself?</p> <p>21 A. I did iterative searches after</p> <p>22 the initial search.</p> <p>23 Q. Again, which you don't document</p> <p>24 in your report; right?</p>	<p style="text-align: right;">Page 193</p> <p>1 A. No.</p> <p>2 Q. Can you give me any estimate at</p> <p>3 all?</p> <p>4 A. No.</p> <p>5 Q. You would agree with me it</p> <p>6 would have been tough for you to review</p> <p>7 36,292 pieces of literature in 384 hours;</p> <p>8 right?</p> <p>9 A. To read them all? Yes.</p> <p>10 Impossible.</p> <p>11 Q. But you can't give me any</p> <p>12 estimate as to how many of them you did read?</p> <p>13 A. No. I could tell you that the</p> <p>14 search for, for example, chronic</p> <p>15 non-malignant pain and opioids probably comes</p> <p>16 up with less than 20 papers, I think.</p> <p>17 Q. Okay.</p> <p>18 A. Those, I read them all.</p> <p>19 So then others, there were lots</p> <p>20 of papers that I didn't consider to be</p> <p>21 relevant. They didn't come up in the search</p> <p>22 or there weren't many.</p> <p>23 Q. Okay. But you choose not to</p> <p>24 identify in Exhibit C or anywhere else which</p>

<p style="text-align: right;">Page 194</p> <p>1 papers it was you did actually read; right?</p> <p>2 MS. CONROY: Objection.</p> <p>3 THE WITNESS: No, it's some</p> <p>4 cases. For example, the chronic</p> <p>5 non-malignant pain, for the number of</p> <p>6 people who have pain, I think there's</p> <p>7 specific literature cited for the EERW</p> <p>8 section. There's lot of literature</p> <p>9 mentioned.</p> <p>10 In other cases there's specific</p> <p>11 literature mentioned.</p> <p>12 Q. (BY MS. SAULINO) Are you</p> <p>13 testifying that unless -- that every piece of</p> <p>14 specific literature that you reviewed and</p> <p>15 relied on is listed somewhere in your report?</p> <p>16 A. No.</p> <p>17 Q. So there are some missing?</p> <p>18 MS. CONROY: Objection.</p> <p>19 THE WITNESS: I'm -- well,</p> <p>20 first of all, there's 35,000, 36,000</p> <p>21 articles that were part of the general</p> <p>22 search. Aside from giving you the</p> <p>23 titles, I didn't cite them because</p> <p>24 most of them I didn't rely on.</p>	<p style="text-align: right;">Page 196</p> <p>1 A. Correct. Forgot about those</p> <p>2 two.</p> <p>3 Q. What are the names of those</p> <p>4 articles?</p> <p>5 A. One came out of Yale, was --</p> <p>6 Ross is one of the authors. That paper deals</p> <p>7 with -- correlates the money spent to</p> <p>8 influence physicians with the dose of opioids</p> <p>9 used by physicians.</p> <p>10 And the other one correlates</p> <p>11 death rates to higher dose. It's kind of</p> <p>12 like a matched set. They're both in JAMA, I</p> <p>13 think. Ross is in JAMA. I think the other</p> <p>14 one is also in JAMA.</p> <p>15 Q. Now, if you look at page 48 of</p> <p>16 your report, at the top.</p> <p>17 A. Okay.</p> <p>18 Q. You have a section titled</p> <p>19 "Evaluation of funding source and conflicts</p> <p>20 of interest"; right?</p> <p>21 A. I do.</p> <p>22 Q. And there you say, "In addition</p> <p>23 to the factor reviewed above" -- I believe</p> <p>24 you meant to say "factors" there, right?</p>
<p style="text-align: right;">Page 195</p> <p>1 Although, I reviewed them to the</p> <p>2 extent that searching the abstracts</p> <p>3 and key words reviews them.</p> <p>4 There are other sections where</p> <p>5 there is detail on the number of</p> <p>6 papers and cites. For example, the</p> <p>7 impact of marketing on physician</p> <p>8 behavior and conduct. There's a lot</p> <p>9 of cites there. Probably not all of</p> <p>10 them.</p> <p>11 There's two papers that came</p> <p>12 out last week -- oh, I should have</p> <p>13 mentioned those before. They would be</p> <p>14 supplemental bases for my opinion, one</p> <p>15 that came out, I think yesterday.</p> <p>16 So -- that are relevant. And those</p> <p>17 are not in the report for obvious</p> <p>18 reasons. They didn't exist.</p> <p>19 Q. (BY MS. SAULINO) So those are</p> <p>20 additional new bases for your opinions?</p> <p>21 A. They're additional new bases</p> <p>22 for my opinions.</p> <p>23 Q. And they're not included in</p> <p>24 anything you've testified to already; right?</p>	<p style="text-align: right;">Page 197</p> <p>1 A. Correct. That's a</p> <p>2 typographical error.</p> <p>3 Q. "Funding source and conflicts</p> <p>4 of interest should be reviewed and considered</p> <p>5 for all studies"; right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And you say that because</p> <p>8 you believe -- and I'm now quoting from the</p> <p>9 top of page 49 of your report -- that "There</p> <p>10 is a high risk of bias when the producers of</p> <p>11 evidence have an invested interest in the</p> <p>12 results."</p> <p>13 A. Where are you now?</p> <p>14 Q. I'm looking at the second line</p> <p>15 of the top of page 49.</p> <p>16 A. Okay. Halfway through the</p> <p>17 sentence. Yes. That's part of that</p> <p>18 sentence.</p> <p>19 Q. Okay. I'm just asking whether</p> <p>20 you believe that to be true?</p> <p>21 A. Let me read the whole sentence.</p> <p>22 Q. Well, sir, I'm not really</p> <p>23 asking you whether you believe the sentence</p> <p>24 to be true. I'm just asking whether you</p>

<p style="text-align: right;">Page 198</p> <p>1 believe that there is a high risk of bias 2 when the producers of evidence have an 3 invested interest in the results. I actually 4 thought that would be an easy one for you. 5 MS. CONROY: Objection. 6 THE WITNESS: That's a more 7 complicated question than you might 8 think. That's true, but there's 9 evidence that disclosure also induces 10 misrepresentation. So it goes both 11 ways. 12 Q. (BY MS. SAULINO) Okay. Well, 13 you also believe that whoever funds your 14 organization owns it; right? 15 A. Are you reading from someplace? 16 Q. It is something that you 17 included in one of your opinions, but I'm 18 just asking you whether you believe that. 19 A. Out of context? No. 20 Q. So it's not something you 21 generally believe? 22 MS. CONROY: Objection. 23 THE WITNESS: Yeah, I don't 24 have a statistic on that. It's</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Okay. You didn't say that 2 here, did you? 3 A. That's correct. I just 4 modified it. 5 Q. And have you modified your 6 thinking on that since March 25th? 7 A. No. It was incomplete, this 8 sentence. I didn't incorporate the entire 9 idea. 10 Q. Now, you testified earlier that 11 while you haven't been paid yet in this case, 12 you are owed \$600 times 384 hours to date; 13 right? 14 A. Correct. 15 Q. Probably more for today because 16 it would be 650 for today; is that right? 17 650 per hour? 18 A. Correct. 19 Q. Okay. And that, I did it on a 20 calculator and I got \$230,400 owed up until 21 this morning. Does that sound right to you? 22 A. I didn't do the math. I'll 23 take your word for it. 24 Q. And that's just for your hours;</p>
<p style="text-align: right;">Page 199</p> <p>1 certainly not always true. 2 Q. (BY MS. SAULINO) In any event, 3 for the reasons of potential bias, you 4 included funding source and industry bias as 5 one of the factors that would decrease your 6 confidence in a particular source of 7 evidence; right? 8 A. That's generally the direction 9 of the medical literature, correct. 10 Q. Okay. And there, I wasn't 11 quoting but I was looking at the very last 12 sentence of 333.5. 13 Just letting you know where I 14 was looking, sir. 15 A. Okay. 16 Q. Okay? 17 A. There's no question. 18 Q. So you are agreeing that you 19 included funding source and industry bias as 20 one of the factors that would decrease your 21 confidence in a particular source of 22 evidence? 23 A. Unless it was a statement 24 against interest.</p>	<p style="text-align: right;">Page 201</p> <p>1 right? 2 A. Correct. 3 Q. So we then need to add to that 4 all of the hours that have been spent by your 5 staff and students; right? 6 A. Correct. 7 Q. At their hourly rates; right? 8 A. Correct. 9 Q. And do you get some of that 10 money as well? 11 A. That money is all paid to me 12 and then I pay them. 13 Q. Is it a complete pass-through 14 or do you keep some of it? 15 A. There's no way to complete 16 pass-through. I pay benefits, vacation, 17 things like that. So I -- there's no way for 18 me to calculate what the overage is. It's 19 not a complete pyramid scheme like a law firm 20 might run. 21 Q. So they each make their own 22 hourly rate that's not the same as you're 23 charging the plaintiffs? 24 A. They make an hourly rate and</p>

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1 time and a half for overtime that's -- I have  
2 a fixed rate for the plaintiffs.  
3 Q. What is your hourly rate for  
4 your students?  
5 A. I don't -- the students are \$20  
6 an hour.  
7 Q. No, I know. That you pay them.  
8 A. \$20 an hour.  
9 Q. And what about for each of your  
10 staff members?  
11 A. What their hourly rates are?  
12 Q. Yes.  
13 A. I don't recall.  
14 Q. Less than \$70 an hour?  
15 A. Well, I think their rate's  
16 generally between 25 and 35 or 40. But when  
17 they're working time and a half or  
18 double-time, which happens, then they could  
19 get up to 60 or \$70 an hour.  
20 Q. Do you charge the plaintiffs  
21 overtime?  
22 A. No. Plaintiffs get a fixed  
23 rate. So that's why I'm saying I -- the  
24 overage I get from them is not much, usually,

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1 because I don't -- they're billed at a fixed  
2 rate.  
3 Q. Okay. In addition to that, you  
4 have previously testified that you've made  
5 certainly more than 5 million, probably more  
6 than \$6 million from testimony that you have  
7 given for plaintiffs over the years; right?  
8 A. Well, in litigation, I think  
9 it's both at the request of plaintiffs and  
10 defendants, yes.  
11 Q. Well, earlier you said that of  
12 your -- I think you said 4 to 500 times  
13 testifying, although previously you've said 6  
14 to 700 times testifying -- that the vast  
15 majority of that was testimony that the  
16 plaintiffs had been retained -- had retained  
17 you to do; right?  
18 A. That's correct.  
19 Q. And you've previously testified  
20 to that as well; right?  
21 A. Yes.  
22 Q. Now, you've never testified on  
23 behalf of a pharmaceutical company in  
24 litigation, where a plaintiff is alleging a

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1 personal injury, have you?  
2 A. I don't testify on behalf of  
3 anybody, and I've not been retained by a  
4 pharmaceutical company in any cases.  
5 Q. Okay. And you've not been  
6 retained by a pharmaceutical distributor in  
7 any cases?  
8 A. Correct.  
9 Q. And you've not been retained by  
10 a pharmacy in any cases; right?  
11 A. Correct.  
12 Q. But you have said publicly that  
13 you believe that companies deserve full  
14 credit for lying, cheating, and endangering  
15 people's health; right?  
16 A. Correct.  
17 Q. You've also said that you  
18 believe that "Every day executives from  
19 corporations spanning the pharmaceutical and  
20 medical device industry, preoccupied with  
21 increasing profits and maintaining status as  
22 viable competitors in the industry, knowingly  
23 market unsafe or inadequately tested drugs  
24 and medical devices to raise their bottom

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1 line"; right?  
2 A. I think that's a correct quote.  
3 It's from the science article?  
4 Q. It is a quote from an article  
5 by you and Dr. Ardolino?  
6 A. Oh. So that's a published  
7 paper. That's a published book chapter now.  
8 Correct.  
9 Q. You do hold that belief,  
10 though; right?  
11 A. True.  
12 Q. And you've made a lot of money  
13 off of those beliefs that you hold; right?  
14 MS. CONROY: Objection.  
15 THE WITNESS: No.  
16 Q. (BY MS. SAULINO) Well, you've  
17 made certainly more than 5 million, probably  
18 more than 6 million up until this litigation,  
19 and then another couple hundred thousand so  
20 far; right?  
21 A. That's correct. Those are not  
22 related ideas.  
23 Q. So you're saying that your work  
24 for the plaintiffs in this case and in other

<p style="text-align: right;">Page 206</p> <p>1 cases where you've testified holds no          2 relationship to your beliefs that we just          3 recounted?</p> <p>4 A. No. It doesn't relate to my          5 beliefs. That's correct. It relates to the          6 fact that led to my beliefs.</p> <p>7 Q. I see. And so isn't it true,          8 though, sir, based on your own logic that you          9 explain in your report, that all of the          10 hundreds of thousands of dollars you've made          11 in this case and the millions of dollars          12 you've made over the years, testifying for --          13 as having been retained by plaintiffs'          14 lawyers is a factor that should lead jurors          15 to decrease their confidence in the evidence          16 that you present?</p> <p>17 A. It's certainly something they          18 should consider in evaluating my testimony.</p> <p>19 Q. Okay.</p> <p>20 A. There is a difference between          21 this and the other biases discussed in the          22 medical literature. That difference is this          23 process, and it is not a trivial difference.</p> <p>24 Q. When you say "That difference</p>	<p style="text-align: right;">Page 208</p> <p>1 bias. And so when I know -- when you know          2 you're in this process, and I know I'm in          3 this process, there's a lot of reasons that I          4 want to stick to the truth as much as          5 possible and not spin anything, or take          6 anything out of context. Because I have          7 great faith that you will be able, with all          8 of your resources and with your great          9 intelligence, to try to catch every minor or          10 major error I make.</p> <p>11 Q. So those reasons that you just          12 laid out would also lead you, wouldn't they,          13 sir, to want to detail in your report every          14 step that you took in order to get to each of          15 the conclusions that you made?</p> <p>16 A. No. Can't do that. I don't          17 have enough time. I'd be dead by the time          18 the report was written.</p> <p>19 Q. So you're agreeing with me,          20 sir, that you choose here not to detail each          21 of the steps that you took to reach each of          22 the conclusions that you made?</p> <p>23 MS. CONROY: Objection.</p> <p>24 THE WITNESS: Correct. I</p>
<p style="text-align: right;">Page 207</p> <p>1 is this process," you mean your          2 evidence-based medicine combined with          3 grounded theory approach that you have been          4 discussing today?</p> <p>5 A. No. I mean your          6 cross-examination. I mean your ability to          7 research and review everything I've written.</p> <p>8 This room full of lawyers who          9 are looking for any and every mistake I may          10 have made limits my ability to twist, slant,          11 or in any other way deviate from the facts.          12 This process is much more rigorous, not even          13 close, to peer review, to dissertation review          14 or anything else. So when I prepare reports          15 or testimony for this process, it's in          16 anticipation of being reviewed in immense          17 detail.</p> <p>18 And not only that. I          19 understand that everything that I've said in          20 my entire life will be reviewed and will be          21 compared to the opinions that I give in this          22 litigation, as we sit here today.</p> <p>23 So there's nothing like this          24 process in the other areas or aspects of</p>	<p style="text-align: right;">Page 209</p> <p>1 had -- I detailed what I thought were          2 the bases of my opinions that could be          3 evaluated, as you have been evaluating          4 them, if it was a way that was          5 sufficient for someone to understand          6 what I did and look at what I did and          7 evaluate whether it was compatible          8 with the data that I reviewed.</p> <p>9 And I am sure that if there was          10 something that I said that was wrong,          11 you will find it and you will correct          12 it.</p> <p>13 In some ways, I very much value          14 this process because if I made a          15 mistake, I don't want to make a          16 mistake. And so if you find someplace          17 where I made a mistake, I want to          18 correct it. I certainly want to say          19 it in a public forum.</p> <p>20 Q. Now, sir, you just -- I'm sure          21 you were joking, but you just said "I would          22 be dead if I wrote down each of the steps          23 that I took." Right? Meaning that it would          24 take a long time to write that down?</p>



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1 A. Hopefully I'm going to live  
2 long enough, yes. That's correct.  
3 Q. Okay.  
4 A. Yes.  
5 Q. But you're saying that they are  
6 steps that you did take, right?  
7 A. Well, yes. I take a lot of  
8 steps in my head that I don't write down.  
9 Q. And these are steps that you've  
10 taken in less than four months; right?  
11 A. No.  
12 Q. Well, you were retained in  
13 November of 2018; right?  
14 A. Yes.  
15 Q. You were presented with your  
16 assignment in November of 2018; right?  
17 A. Yes.  
18 Q. And that was the answerable  
19 question that you then applied your  
20 methodology to; right?  
21 A. Yes.  
22 Q. And that was about four months  
23 ago, wasn't it?  
24 A. Those facts individually are

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1 correct. But remember, I've been working on  
2 this case and had access to some of these  
3 documents since 2003.  
4 I've been reviewing opioid  
5 literature and studying opioids and pain  
6 since 1974.  
7 So a lot of the information  
8 that goes into the report dates from 1974.  
9 Q. And there's no way for us to  
10 know what in the report dates from 1974 and  
11 what in the report is something that you  
12 reviewed in connection with this litigation?  
13 A. Well, you can assume anything  
14 that I read after November, okay? -- was at  
15 least in part -- that I incorporated into the  
16 report -- was in part related to my work in  
17 this case. Although, some of that literature  
18 I would have seen and read otherwise.  
19 In other words, the Ross paper  
20 that I mentioned. Well, that was e-mailed to  
21 me last night by my other kid who's at Yale.  
22 So -- because it just came out  
23 yesterday.  
24 So now that, I would not have

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1 read that last night had he not sent it to  
2 me.  
3 Q. You say we can assume anything  
4 that you read after November was a part of  
5 the -- or related to your work on the report;  
6 right?  
7 A. I think that's fair.  
8 Q. Okay. Where do you list that?  
9 A. I don't list it. You go by the  
10 dates.  
11 Q. Oh, I see. So anything written  
12 after November?  
13 A. Correct. Yeah. Anything  
14 written after November after I was retained  
15 in the case that was related to the case  
16 that's in the report, I read it in relation  
17 to the case.  
18 Q. That's not terribly specific  
19 guidance, is it?  
20 MS. CONROY: Objection.  
21 Q. (BY MS. SAULINO) Not much of  
22 your opinion is based on things that were  
23 written after November of 2018; isn't that  
24 right?

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1 A. I don't -- I imagine most of  
2 what I wrote is based on things written  
3 before.  
4 Q. Okay. So what I'm asking you  
5 is, you said it would take a really long time  
6 for you to write down all of the steps you  
7 took in order to answer the question that you  
8 were asked in this litigation and then  
9 applied your methodology to; right?  
10 We've been talking about you  
11 would be dead by then, but we all know you  
12 were joking, and we all hope that doesn't  
13 happen, so it took a really long time is what  
14 I said.  
15 A. Right. We could take a vote on  
16 whether anybody hopes it doesn't happen, but  
17 that's correct. I bet you it won't be  
18 unanimous.  
19 SPECIAL MASTER COHEN: I'm  
20 neutral, I don't vote.  
21 MR. MIGLIORI: Can some of us  
22 vote twice? I'd like to vote twice.  
23 Q. (BY MS. SAULINO) But we can  
24 agree to what you were saying there.

<p style="text-align: right;">Page 214</p> <p>1 A. And that includes plaintiff  2 lawyers. I guarantee that.  3 Q. Fair enough. We can discuss  4 this at a break.  5 So what you were saying there  6 is it would take you a really long time to  7 write down all of the steps that you took;  8 correct?  9 A. Correct.  10 Q. But these are steps that you  11 took in four months; right? That's what I'm  12 trying to get at.  13 A. No, No. A lot of the steps  14 began, as I said in 1974. I've been reading  15 literature --  16 Look, I did the reports in 2004  17 in the Purdue literatures. I did the FDA  18 presentation in 2013. I wasn't involved in  19 any litigation between 2005, 2013 till  20 November; right? I obviously had been  21 staying up with the literature. Okay?  22 Because -- and I was staying up with the  23 issue because I, on my own, did the paper and  24 presentation at FDA.</p>	<p style="text-align: right;">Page 216</p> <p>1 general -- a more general question is, you  2 know, why did this person get addicted and  3 die? That's the question.  4 I mean, it's a simple question,  5 really.  6 Q. Okay.  7 A. But it's translated into kind  8 of a more bite-sized piece there. Because  9 when I go to the why question, you -- most  10 people stop at the patient level. I don't  11 stop at the patient level.  12 Okay? I ask that question all  13 the way to the generators of the  14 manufacturers of the product, the  15 distributors of the product, et cetera.  16 Q. Okay.  17 A. So that's just how I frame the  18 question.  19 Q. All right, sir. So --  20 A. Sorry, go ahead.  21 Q. It is fair to say that you  22 didn't have access to the database of  23 documents produced by defendants until  24 November 2018; right?</p>
<p style="text-align: right;">Page 215</p> <p>1 Also, I brought that story to  2 the L.A. Times. The L.A. Times story, that  3 was based on my bringing that stuff to them.  4 Q. Okay.  5 A. So, I mean, I've been doing  6 things got nothing to do with the litigation.  7 I've been concerned about this issue for a  8 long time. I've been reading about this  9 issue for a long time, applying this same  10 methodology.  11 Q. Okay. So but I'm asking you  12 about your expert work in this case. Your  13 methodology requires you to start with an  14 answerable question, which you got in  15 November of 2018; right?  16 A. I got that -- but that question  17 is the question I've been applying --  18 That question came from me,  19 modified slightly by the lawyers. And that's  20 the question I've been asking all the time.  21 It's a similar question to what I ask -- I  22 develop in every case I do.  23 In other words, it's -- that's  24 the -- the question of -- it's really a</p>	<p style="text-align: right;">Page 217</p> <p>1 A. No. I had some of them in  2 2003, 2004, and 2005.  3 Q. And those were Purdue  4 documents?  5 A. Purdue and others. Because  6 they produced other documents. I think they  7 probably had some of the front group  8 documents that were in that mix.  9 Q. Tell me something, sir. Did  10 the protective orders that you signed in  11 those cases require you to destroy those  12 documents after the litigation was over?  13 A. The Purdue documents?  14 Q. Uh-huh.  15 A. I don't think so. I don't  16 recall.  17 Q. Well, clearly, you didn't. You  18 kept them; right?  19 A. Yeah. There were five CDs of  20 documents that were released by the attorney  21 general of Florida. I got those CDs. Those  22 are not confidential.  23 Q. So nowhere in your report do  24 you give us any idea of which of your</p>

<p style="text-align: right;">Page 218</p> <p>1 opinions are based on things that you've  2 known since 1970 and which of your opinions  3 are based on things that you've learned since  4 November of 2018; right?  5 MS. CONROY: Objection.  6 THE WITNESS: Yes, as I  7 modified before.  8 MS. SAULINO: Okay.  9 Q. (BY MS. SAULINO) Now, you say  10 that step 4 of the evidence-based medicine  11 method, which you list on page 49, you say,  12 "This step speaks for itself."  13 "Once a critical analysis of  14 the evidence has been completed, the findings  15 can be applied to the situation at hand";  16 right?  17 A. Correct.  18 Q. And you don't document what the  19 situation at hand is, right?  20 A. Well, the situation at hand  21 would be the assignment, yeah.  22 Q. Okay. And you didn't write  23 that down here, did you?  24 A. I did not write that down.</p>	<p style="text-align: right;">Page 220</p> <p>1 this context. Of those which did apply, I  2 found that my performance was satisfactory";  3 right?  4 A. Correct.  5 Q. Which ones applied?  6 A. Am I asking any clinical  7 questions at all that apply? And am I asking  8 well-formulated questions based on the  9 guidance reviewed above? I think I apply.  10 Am I using a map to locate my knowledge gaps  11 and articulate questions? I didn't do that  12 explicitly. I don't think that's doable in  13 this situation because of the grounded theory  14 method doesn't really apply to that kind of  15 construct.  16 Can I get myself unstuck when  17 asking questions? Doesn't really apply.  18 More clinical -- limited clinical stuff.  19 Am I modeling the asking of  20 answerable questions for my learners? I did  21 not do that. That's really related to  22 teaching.  23 Am I writing any educational  24 prescriptions in my teaching? Are they being</p>
<p style="text-align: right;">Page 219</p> <p>1 Q. And step 5 is a  2 self-evaluation; right? An evaluation of  3 performance?  4 A. Correct.  5 Q. And you say, "Guidelines exist  6 for self-evaluation of each of the previous  7 steps of EBM practice"; right?  8 A. Right.  9 Q. And then you said -- you then  10 list seven questions for self-evaluation of  11 finding the best external evidence; right?  12 Or sorry -- for ask -- you  13 start with asking answerable questions.  14 There's a self-evaluation for that; right?  15 I apologize. I skipped ahead.  16 A. You skipped a section. That's  17 right, yes.  18 Q. Right. So you start with your  19 self-evaluation for answering answerable  20 questions; right?  21 A. Right.  22 Q. You then list a number of  23 questions, but you say, "Not all of these  24 questions applied to my practice of EBM in</p>	<p style="text-align: right;">Page 221</p> <p>1 filled? I didn't do that. It's not part of  2 my role here.  3 Are we incorporating questions  4 asking and answering it to everyday  5 activities? No. Not part of my role here.  6 Well, because I'm blocked from doing that  7 because of the confidentiality orders.  8 How well am I guiding my  9 learners in the questions that -- in their  10 question asking? Well, I did discuss the  11 assignment, and when they got my report, the  12 plaintiff lawyers asked a lot of questions  13 about the report and the -- we discussed the  14 nature of the report.  15 Are my learners writing  16 educational prescriptions for me? No. The  17 plaintiff lawyers didn't write me any  18 educational prescriptions. So those are the  19 ones that didn't.  20 Q. So of your one, two, three,  21 four, five, six, seven, eight, nine, ten  22 questions here, three of them applied in this  23 context?  24 A. I guess so, if you counted</p>

<p style="text-align: right;">Page 222</p> <p>1 right.</p> <p>2 Q. And you chose, however, to list</p> <p>3 all of these questions and not give us any</p> <p>4 indication of which ones you were actually</p> <p>5 using.</p> <p>6 A. Correct. I didn't explicitly</p> <p>7 state.</p> <p>8 Q. Now, you have a -- the next</p> <p>9 self-evaluation is finding the best external</p> <p>10 evidence, which I accidentally skipped to</p> <p>11 earlier; right?</p> <p>12 A. Correct.</p> <p>13 Q. Okay.</p> <p>14 A. No demerit points for that. Go</p> <p>15 ahead, skip anything you want.</p> <p>16 Q. And you list a number of</p> <p>17 questions here; right?</p> <p>18 A. Correct.</p> <p>19 Q. Now, here you just say, "I</p> <p>20 found that my performance was satisfactory";</p> <p>21 right?</p> <p>22 A. Right.</p> <p>23 Q. So you didn't skip any of</p> <p>24 those?</p>	<p style="text-align: right;">Page 224</p> <p>1 MS. CONROY: Objection.</p> <p>2 Q. (BY MS. SAULINO) And then</p> <p>3 self-evaluation for applying results in</p> <p>4 practice; right?</p> <p>5 A. Right.</p> <p>6 Q. And again, not all of them</p> <p>7 applied. You wrote them all down and didn't</p> <p>8 give us any indication of which ones you</p> <p>9 used; right?</p> <p>10 A. None of these apply to practice</p> <p>11 because there's a confidentiality order in</p> <p>12 the case.</p> <p>13 Q. Well you say here of those</p> <p>14 which did apply, I found that my performance</p> <p>15 was satisfactory.</p> <p>16 A. Let me just --</p> <p>17 Well, the second one applies,</p> <p>18 but it's not really relevant to this process.</p> <p>19 It does apply, but not relevant</p> <p>20 to what we're doing here today.</p> <p>21 Q. All right. Well, let me ask</p> <p>22 you: Your evaluations, your self-evaluations</p> <p>23 that you performed here, where are those</p> <p>24 documented?</p>
<p style="text-align: right;">Page 223</p> <p>1 A. No, I didn't skip any of those,</p> <p>2 but the test is yours.</p> <p>3 Q. I'm sorry?</p> <p>4 A. The test is yours. Better than</p> <p>5 the self-evaluation is this two days.</p> <p>6 Q. You then -- well, you -- you</p> <p>7 say here in your report you performed a</p> <p>8 self-evaluation, sir; right?</p> <p>9 A. Correct.</p> <p>10 Q. That's what I'm asking you</p> <p>11 about right now.</p> <p>12 A. That's correct. But what I'm</p> <p>13 saying is this external evaluation is much</p> <p>14 better than my own.</p> <p>15 Q. You then say, "Self-Evaluation</p> <p>16 for critically appraising the evidence for</p> <p>17 its validity and potential usefulness";</p> <p>18 right?</p> <p>19 A. Correct.</p> <p>20 Q. Here again, not all of the</p> <p>21 questions applied, but you chose to write</p> <p>22 them all down and not give us any indications</p> <p>23 of which ones you used; right?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 225</p> <p>1 A. They're not documented.</p> <p>2 Q. They're not documented</p> <p>3 anywhere?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. So there's no way for us</p> <p>6 to replicate them?</p> <p>7 A. No. You can go through this</p> <p>8 process. I mean, that's what -- I have no</p> <p>9 doubt that you have taken great effort over</p> <p>10 the past four weeks to attempt to replicate</p> <p>11 and test every opinion I've given and every</p> <p>12 basis. So there's plenty -- I imagine that's</p> <p>13 what we're going to spend most of the day</p> <p>14 doing.</p> <p>15 So you can certainly critically</p> <p>16 evaluate what I've done, based on your access</p> <p>17 to the database and the literature, the same</p> <p>18 as I have.</p> <p>19 Q. Sir, what you seem to be saying</p> <p>20 is, I too can look at the database and the</p> <p>21 literature that you -- the massive database</p> <p>22 that you've listed and the massive set of</p> <p>23 literature that you've listed and I can come</p> <p>24 to the same conclusions you did. That's what</p>

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1 you're saying?  
 2 A. No. You can criticize -- I  
 3 don't think you want to do that. That would  
 4 probably not be in your client's best  
 5 interest.  
 6 What I'm saying is you can look  
 7 at the data. You can talk to your client.  
 8 You can talk to lots of experts, and you can  
 9 evaluate what I've written and criticize me,  
 10 based on the same data sets I have.  
 11 Q. So, sir --  
 12 A. And I expect that you've done  
 13 that, and that we'll see the results.  
 14 Q. You understand that you're  
 15 being offered as an expert in this  
 16 litigation; right?  
 17 A. Right.  
 18 Q. That you have some expertise to  
 19 offer to bring to bear on this methodology  
 20 that you've laid out and the approaches that  
 21 you've taken; right?  
 22 A. Correct.  
 23 Q. That you have something above  
 24 and beyond what other people have; right?

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1 A. I have something beyond --  
 2 above and beyond what a layman has.  
 3 Q. I see. But anyone else who has  
 4 a little more knowledge of looking at legal  
 5 databases could do what you do?  
 6 A. I don't know what they could  
 7 do.  
 8 Q. Okay. What I'm asking you,  
 9 sir, is --  
 10 A. That's not what I referred to  
 11 before. I referred to you folks.  
 12 Q. Let me be more clear. What I'm  
 13 asking you, sir, is I have asked you a number  
 14 of questions about how to replicate  
 15 statements you've made in your report as an  
 16 expert; right?  
 17 A. Yes.  
 18 Q. And your response has been  
 19 repeatedly that you're sure I'm doing that  
 20 already; right?  
 21 MS. CONROY: Objection.  
 22 THE WITNESS: No, that's not  
 23 exactly true. You didn't ask that  
 24 question explicitly. If you want to

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1 know how to replicate what I did, you  
 2 take an opinion, okay? Take a sample  
 3 opinion. Okay?  
 4 Here's -- McKesson on page 81.  
 5 Opinion 129. Venture member McKesson  
 6 marketed opioids. I gave you some  
 7 examples where McKesson marketed  
 8 opioids.  
 9 So you can go to the database.  
 10 You can talk to your clients. You can  
 11 say McKesson never marketed opioids.  
 12 The documents that I used that will --  
 13 to substantiate this opinion were  
 14 false or fraudulent or didn't say what  
 15 I said it said. So that's how do you  
 16 this. And you can do that because you  
 17 have access to the database. You have  
 18 access to your client more than I  
 19 have. And you could critique that  
 20 opinion. And say I got it wrong.  
 21 Q. (BY MS. SAULINO) Sir, so what  
 22 I hear you saying is for each and every one  
 23 of these opinions, I can look at the document  
 24 you've cited, document or documents that

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1 you've cited, and that is the basis for your  
 2 opinion and nothing more.  
 3 A. No. There's other documents --  
 4 MS. CONROY: Objection.  
 5 THE WITNESS: -- in the whole  
 6 report. You can look at the whole  
 7 report.  
 8 Q. (MS. SAULINO) No, no, no, sir.  
 9 I'm trying to understand, based on the  
 10 explanation you just gave, how to look at one  
 11 opinion and know what the basis for that  
 12 opinion is. And based on what you just said,  
 13 I look at what you cited and I know.  
 14 A. Not true. What I said was you  
 15 could see if there are other documents that  
 16 contradict that document or statement, and  
 17 then you could look at other documents that  
 18 I've cited, with similar opinions --  
 19 Q. Sir.  
 20 A. -- and determine whether or not  
 21 those are accurate or not.  
 22 Q. Sir.  
 23 A. Ma'am.  
 24 Q. I'm asking a different



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1 question. I'm asking how to replicate what  
2 you did to come to your opinions.  
3 A. Oh, in order to replicate what  
4 I did, you have to do the searches. You have  
5 to do iterative searches. You have to look  
6 for -- in this particular case, you'd have to  
7 look for documents that indicate the case and  
8 marketed opioids, you've got to look at  
9 contracts. You'll got to look at the coupon  
10 program you had, the sampling program you  
11 had. And you'd have to look at those things.  
12 Q. And nowhere in your report do  
13 you provide us the ability to do that for any  
14 particular opinion, do you?  
15 A. No. You have that opinion  
16 because you -- ability because you have the  
17 same access to the same data I have plus  
18 more. You have all of the privileged and  
19 confidential documents.  
20 Q. Sir.  
21 A. You have the ability to talk to  
22 the -- to your own clients.  
23 Q. I was asking a different  
24 question.

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1 Nowhere in this report do you  
2 provide us the ability to replicate what you  
3 did in order to come to any particular  
4 opinion.  
5 A. Wrong.  
6 Q. Nowhere in this report do you  
7 provide us the ability to look at one opinion  
8 and know what you looked at, what iterative  
9 searches you made, what conclusions you came  
10 to, how you challenged them, how you  
11 self-appraised them, none of that; right?  
12 A. In detail, that's correct.  
13 Q. Okay. That's all I was asking.  
14 A. All right.  
15 THE WITNESS: Can we take a  
16 break?  
17 MS. SAULINO: Yeah, I think now  
18 is a good time for a break.  
19 THE VIDEOGRAPHER: Off the  
20 record. 2:41.  
21 (Recess taken, 2:41 p.m. to  
22 3:10 p.m.)  
23 THE VIDEOGRAPHER: We are back  
24 on the record at 3:11.

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1 THE WITNESS: Okay. So these  
2 are the two articles that I mentioned  
3 that came up this week as new bases.  
4 Q. (BY MS. SAULINO) Okay. So  
5 thank you, Doctor. You're looking at a  
6 folder that you have marked 26, which is a  
7 red folder and we're going to mark as  
8 Exhibit 6 to your deposition.  
9 (Whereupon, Deposition Exhibit  
10 Egilman 6, Folder 26 arrow up does =  
11 arrow up death, was marked for  
12 identification.)  
13 Q. (BY MS. SAULINO) All right.  
14 Dr. Egilman, I'd like to turn to the grounded  
15 theory approach, which you begin discussing  
16 on the bottom of page 38 of your report.  
17 A. Okay.  
18 Q. Now, you say that "Grounded  
19 theory is an inductive method which allows  
20 analytical categories to emerge from the data  
21 presented"; right?  
22 Second sentence.  
23 A. 38?  
24 Q. Yeah. Second sentence under

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1 "State of the art methods." The portion  
2 where you start talking about the grounded  
3 theory approach.  
4 A. Oh, yeah, right. Go ahead.  
5 Q. Okay. And you then two  
6 sentences later say, "The grounded theory  
7 approach recognizes that data collection and  
8 analysis are inherently interrelated  
9 processes and calls for analysis to begin at  
10 the time of first data collection"; right?  
11 A. Correct.  
12 Q. And the grounded theory  
13 approach -- and I'm not reading right now,  
14 but based on what I have seen in your report,  
15 is it fair that the grounded theory approach  
16 entails an initial formulation of hypotheses  
17 and then you -- as you've said over and over  
18 today, you constantly revise those during the  
19 course of research; right?  
20 A. Well, you start with a -- you  
21 just start with a question. And then not  
22 necessarily a hypothesis.  
23 Q. Well, then let's look at your  
24 report. You say towards the bottom of

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1 page 38, "As described by Corbin and Strauss,  
2 the hypotheses are constantly revised during  
3 the course of the research, until they hold  
4 truth of the phenomena under study as  
5 evidence in repeated interviews, observations  
6 or documents"; right?  
7 A. Right.  
8 Q. Do you agree with that  
9 statement?  
10 A. Well, I would say hypotheses  
11 are questions.  
12 Q. Okay. Do you see a distinction  
13 between the two?  
14 A. I think you could perhaps --  
15 yeah, there's a distinction because  
16 hypothesis generally is a -- generally  
17 used --  
18 Well, in science use a null  
19 hypothesis, which implies a non-causal  
20 relationship between two items. And a  
21 question is broader than that.  
22 Q. Okay. With respect to the  
23 grounded theory approach, which you discuss  
24 here on pages 30 -- starting on 38 and moving

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1 on to 39, you don't list either initial  
2 hypotheses or initial questions, do you?  
3 A. No, not exactly.  
4 Q. And you don't list your initial  
5 hypotheses or questions to be used in the  
6 grounded theory approach anywhere in your  
7 report, do you?  
8 A. No. Not correct.  
9 Q. Where do you list them?  
10 A. Well, we've gone over some of  
11 them. Some of the background questions were  
12 listed. And then I think in the EERW  
13 section, I think there are hypotheses or  
14 questions listed there.  
15 In the critique of the  
16 Rappaport, chicken and egg constructs, I  
17 think in the chronic pain analysis with  
18 respect to opioid treatment.  
19 Off-label promotion. And the  
20 12-hour dosing regimens, I think certainly  
21 those incorporate questions.  
22 Q. You're talking about particular  
23 opinions that you remember?  
24 A. Correct.

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1 Q. Okay. So with respect to  
2 particular opinions, if we see questions --  
3 if we see initial questions or initial  
4 hypotheses listed there, then you intended  
5 those to be an indication of the initial  
6 questions or hypotheses that you were using  
7 with the grounded theory approach?  
8 A. Or questions, yes.  
9 Q. You said "or questions"?  
10 Sorry?  
11 A. Or questions, yes.  
12 Q. And I said "initial hypotheses  
13 or questions." Yes. So I think we're saying  
14 the same thing. If we see them listed with  
15 respect to an opinion, hypotheses or a  
16 question, you intended that to be a question  
17 of what you used as your initial question or  
18 hypothesis for the grounded theory approach?  
19 A. Yes. Or the evidence-based  
20 medicine question, depending on what the  
21 issue was.  
22 Q. But again, even for the  
23 opinions where you do list questions or  
24 hypotheses, you don't tell us which approach

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1 you're using explicitly in the report.  
2 A. It's not written explicitly,  
3 that's correct.  
4 Q. Okay. And for -- and  
5 otherwise, we have no way of knowing what  
6 your initial hypotheses or questions were;  
7 right?  
8 MS. CONROY: Objection.  
9 Q. (BY MS. SAULINO) For the  
10 grounded theory approach?  
11 A. No.  
12 Q. No, we do not?  
13 A. No, I don't agree with your  
14 statement/question.  
15 Q. Will you agree with me that  
16 only a few of your opinions list initial  
17 questions or hypotheses; right?  
18 A. No, not necessarily. I gave  
19 you the ones I could remember. I'd have to  
20 go through them all to see.  
21 Q. Okay. Well, is it fair to say  
22 that for those that do not list an initial  
23 hypothesis or question, there's no way for us  
24 to know what it was?

<p style="text-align: right;">Page 238</p> <p>1 A. No.</p> <p>2 Q. How would we be able to find</p> <p>3 that in your report?</p> <p>4 A. Well, if you look at</p> <p>5 Opinion 185, Purdue trained Walgreens'</p> <p>6 pharmacists. So that would be the question.</p> <p>7 Did Purdue train Walgreens' pharmacists?</p> <p>8 That's the question that I was answering, for</p> <p>9 example.</p> <p>10 186. Did Purdue use friend</p> <p>11 groups? I put Purdue use friend groups. You</p> <p>12 just put a "did" in front and that's your</p> <p>13 question.</p> <p>14 Q. So for each and every one of</p> <p>15 your opinions, we should assume, then, that</p> <p>16 the opinion turned out to be what the initial</p> <p>17 question was?</p> <p>18 That's what you're saying?</p> <p>19 A. No.</p> <p>20 Q. So again I ask you, sir, how do</p> <p>21 we know for any individual opinion what the</p> <p>22 initial question or hypothesis was if you</p> <p>23 didn't list it for us?</p> <p>24 A. I gave you two examples. I can</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. Okay. So we would do that by</p> <p>2 looking at your opinion, looking at the</p> <p>3 basis, and if we see a question there, we'll</p> <p>4 know what question you started with; right?</p> <p>5 A. That would be true.</p> <p>6 Q. Okay. If we look at the</p> <p>7 opinion, look at your report, there is no</p> <p>8 question there, we don't have any way of</p> <p>9 knowing whether you started with something</p> <p>10 different than where you ended up; right?</p> <p>11 A. No.</p> <p>12 Q. We don't have any way of</p> <p>13 knowing one way or the other, do we?</p> <p>14 A. No, you do. I gave you some</p> <p>15 examples.</p> <p>16 Q. Well, sir, I -- I see your</p> <p>17 examples. Example 185 you said, your opinion</p> <p>18 is Purdue trained Walgreens pharmacists. And</p> <p>19 that we should then assume that your question</p> <p>20 was, did Purdue train Walgreens pharmacists;</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. So what you're telling me is</p> <p>24 that for each and every one of your opinions,</p>
<p style="text-align: right;">Page 239</p> <p>1 go through each opinion.</p> <p>2 Q. Well, sir --</p> <p>3 A. And give you -- and go through</p> <p>4 them if you want. I don't think you want me</p> <p>5 to do that.</p> <p>6 Q. The two examples that you just</p> <p>7 gave me were 185 and 186.</p> <p>8 And for each of those examples,</p> <p>9 you read the opinion and put a did in front</p> <p>10 of it. Right?</p> <p>11 A. Correct.</p> <p>12 Q. Which means, then, that you</p> <p>13 started with the question that ended up being</p> <p>14 your opinion; right?</p> <p>15 A. No. It means there was a</p> <p>16 question and I gave the answer.</p> <p>17 Q. I see. For any of your</p> <p>18 opinions, was there -- is there a way to see</p> <p>19 that you started with a question that is</p> <p>20 different than where you ended up?</p> <p>21 A. I think so.</p> <p>22 Q. Is there a way to see it in</p> <p>23 your report?</p> <p>24 A. I think so.</p>	<p style="text-align: right;">Page 241</p> <p>1 unless you otherwise list a question or</p> <p>2 hypothesis, we should assume, then, that the</p> <p>3 question you asked was the opinion you ended</p> <p>4 up with; right?</p> <p>5 A. No.</p> <p>6 Q. Well then how else will we know</p> <p>7 how to figure it out?</p> <p>8 A. Well, it's going to be</p> <p>9 different for different opinions. I'd have</p> <p>10 to go through each and every one.</p> <p>11 Q. And you didn't provide that</p> <p>12 information in your report; right?</p> <p>13 A. It's not explicit. It's</p> <p>14 implicit. You would have to infer that when</p> <p>15 I wrote "Purdue trained Walgreens'</p> <p>16 pharmacists," that that was a relevant answer</p> <p>17 to a question about whether Purdue was</p> <p>18 involved in the training of Walgreens'</p> <p>19 pharmacists.</p> <p>20 Q. You say that's implicit?</p> <p>21 A. Yes.</p> <p>22 Q. There's no indication in your</p> <p>23 report that your question was did Purdue</p> <p>24 train Walgreens pharmacists, is there?</p>

<p style="text-align: right;">Page 242</p> <p>1 A. That question is not part of 2 that opinion. 3 Q. So, again, unless you list an 4 actual question in the bases for your 5 opinion, we have no way of knowing where you 6 started. 7 MS. CONROY: Objection. 8 THE WITNESS: No. 9 Q. (BY MS. SAULINO) How will we 10 know by looking at your report? 11 A. It's obvious in the case of 12 many of the answers, if not all of them. 13 Q. Sir, if it's obvious then why 14 did it require expertise? 15 MS. CONROY: Objection. 16 THE WITNESS: The formulation 17 of the question required expertise. 18 The understanding of what the question 19 was may also require expertise. 20 Q. (BY MS. SAULINO) If the 21 formulation of the question required 22 expertise, then wouldn't we need to see your 23 expertise in order to know what the question 24 was?</p>	<p style="text-align: right;">Page 244</p> <p>1 was the assignment that you've now given us; 2 right? 3 A. Correct. 4 Q. And you do say, though, on 5 page 39 at the bottom -- 6 A. Hang on one sec. 7 Go ahead. 8 Q. On page 39 at the bottom, you 9 do say that after -- so you -- you list some 10 search terms that you used; right? 11 A. In the middle? 12 Q. Mm-hmm. 13 A. Yes. 14 Q. And then you say, "After the 15 emergent" set of -- I'm sorry -- emergent 16 "subset of documents was reviewed, key themes 17 and concerns were identified, including 18 documents specifically pertaining to 19 evidence-based medicine, third-party interest 20 groups, public/private partnerships, EERW 21 study design, chronic pain treatment, return 22 on investment for marketing techniques, 23 hospital licensing and accreditation, state 24 medical board licensing, off-label promotion,</p>
<p style="text-align: right;">Page 243</p> <p>1 A. I'm not sure I understand that 2 question. The answer, I think, is no, beyond 3 knowing what I've already told you about my 4 expertise. 5 Q. So you can't give me any other 6 way to figure out what question you began 7 with for any opinion for which you don't list 8 a question. 9 A. I said I think it's obvious 10 from most of the opinions what the question 11 was. 12 Q. Okay. 13 A. Remember that the overriding 14 question is the assignment. So all of these 15 are subanswers to the assignment question. 16 So the question for all of 17 these is the assignment, and then all of 18 these are answers to the assignment. 19 Now, there are implicit 20 subquestions that require expertise, and 21 that's what all of these opinions are. 22 Q. Okay. You didn't say anywhere 23 in Section 3.2, starting on page 38, that 24 your overall question that you were answering</p>	<p style="text-align: right;">Page 245</p> <p>1 diversion, and 12-hour dosing regimens"; 2 right? 3 A. Yes. 4 Q. You don't list what the key 5 themes and concerns were that you identified; 6 right? 7 A. You just read them. 8 Q. So those are the key themes and 9 concerns? 10 A. Those were some, probably not 11 all of the key themes and concerns. 12 Q. And there's no way for us to 13 see from your report what all of your key 14 themes and concerns were; right? 15 A. No. All of the ones -- they 16 were all in the report. So anything in the 17 report you can assume is a key theme or 18 concern. 19 Q. And the only way that we would 20 be able to get there from your report is just 21 by making an assumption? 22 MS. CONROY: Objection. 23 THE WITNESS: No. 24 Q. (BY MS. SAULINO) Well, if I</p>

<p style="text-align: right;">Page 246</p> <p>1 wanted to identify all of the key themes and  2 concerns that you identified when you  3 reviewed the emergent subset of documents  4 that came out of the search terms that you  5 identify on page 39, I would start with the  6 list you provide here. And where else would  7 I find the rest of them?  8 A. If there are others that are  9 not mentioned here, they would be in the  10 opinions.  11 Q. So -- but there is no way for  12 us to know precisely which opinions contain a  13 key theme or concern that you identified  14 after reviewing the documents that emerged  15 from your search using the key terms  16 identified on page 39.  17 A. No.  18 Q. There is a way for us to know?  19 A. Yes.  20 Q. And what is that way?  21 A. They all came out of the  22 searches. It's not that -- they weren't -- I  23 didn't dream them like Kaiko dreamed that,  24 you know, OxyContin was a 12-hour drug. That</p>	<p style="text-align: right;">Page 248</p> <p>1 So repetition is important;  2 right?  3 A. Correct.  4 Q. All right. So what you're  5 telling me now is that in order to figure out  6 what key themes and concerns you started with  7 and then tested with your repeated process,  8 we just look at the opinions and every  9 opinion is a key theme or concern that you  10 started with?  11 A. No. It doesn't say what you  12 start with. It says -- this is an iterative  13 process, and it says -- this sentence that  14 you just didn't read says they're constantly  15 revised.  16 Q. Right.  17 A. So the end revision of whatever  18 the key theme or concern is is what appeared  19 in the report as an opinion.  20 Q. And I'm asking how we figure  21 out where you started, sir.  22 It's not in the report, is it?  23 A. Yes, it is. You start on  24 page 39 in the middle with all those</p>
<p style="text-align: right;">Page 247</p> <p>1 all came out of the searches.  2 Q. Well, you'd agree with me,  3 wouldn't you, sir, that grounded theory  4 approach is an iterative process?  5 A. Yes.  6 Q. So you do one set of searches.  7 You come up with key themes and concerns.  8 You do more searches. You continue to test;  9 right?  10 A. Yes.  11 Q. Testing and repetition is  12 important to the grounded theory approach;  13 right?  14 A. Well, it may or may not be  15 important. There's no real -- in general,  16 yes.  17 Q. You and I just looked on  18 page 38 at a quote you put in your report  19 from Corbin and Strauss that says, "The  20 hypotheses are constantly revised during the  21 course of research until they hold true for  22 the phenomena under a study as evidenced in  23 repeated interviews, observations or  24 documents"; right?</p>	<p style="text-align: right;">Page 249</p> <p>1 searches.  2 Q. Okay.  3 A. And then those searches  4 resulted in a subset of other items, not --  5 this is not a complete list of all the other  6 items but many of these. And then all of  7 these then resulted in opinions.  8 Q. Okay. And what I'm looking for  9 is where you list the subset of other items  10 that you were just talking about. Some of  11 them are listed here, as you just  12 acknowledged, but not all of them.  13 A. I don't think all of them, but  14 I -- you know, it's possible that all of the  15 opinions are subsets of these opinions.  16 Q. You don't know one way or the  17 other sitting here today?  18 A. I haven't evaluated it for that  19 question. That's not something I did.  20 Q. And then you say, "Additional  21 searches were conducted to explore these and  22 other more specific topic areas as they  23 arose." Right?  24 A. Correct.</p>



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1 Q. You don't give us any search  
2 terms or parameters for those additional  
3 searches that you conducted; right?  
4 A. That's correct.  
5 Q. Okay. So there's no way for us  
6 to know what those were?  
7 A. That's correct.  
8 Q. Okay. And then you say, "This  
9 iterative analysis formed the basis for my  
10 state-on-the-art opinions in this case."  
11 A. That's correct.  
12 Q. Did you mean "state of the  
13 art"?  
14 A. Yes.  
15 Q. Okay. And you believe that  
16 your opinions are state of the art; right?  
17 A. What do you mean by "state of  
18 the art"?  
19 Q. I'm using your words, sir.  
20 A. My words are they're state of  
21 the art -- there's various definitions of  
22 state of the art. There's a medical state of  
23 the art, and then there's this -- this  
24 description of state of the art which

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1 generally is historical analysis of what went  
2 on and why. And that's what this is.  
3 Q. Okay. But again, you don't  
4 provide us a roadmap to your historical  
5 analysis of what went on and why; right?  
6 MS. CONROY: Objection.  
7 THE WITNESS: That's not true.  
8 I think it's incorporated in the  
9 opinions.  
10 Q. (BY MS. SAULINO) Other than  
11 assumptions that one would make by looking at  
12 the opinions, you don't provide a roadmap to  
13 us about how you've used your process to get  
14 there; right?  
15 MS. CONROY: Objection.  
16 THE WITNESS: No.  
17 Q. (BY MS. SAULINO) You do  
18 provide a roadmap?  
19 A. Well, I provide in some cases a  
20 specific roadmap. In other cases, I give you  
21 a general idea of where to go.  
22 Q. Why don't we look at  
23 Opinion 85. So that would be on page 75.  
24 You actually list it here as

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1 7.85. Right?  
2 A. Right.  
3 Q. We're in the same place?  
4 A. Yeah.  
5 MS. SAULINO: What's happening  
6 right now?  
7 THE WITNESS: She's getting me  
8 the opinion.  
9 Q. (BY MS. SAULINO) Okay. Well,  
10 I'll give you the documents when we're ready  
11 to talk about them.  
12 MS. CONROY: If the doctor  
13 would like to refer to the opinion, I  
14 don't see any reason why he can't look  
15 at it.  
16 MS. SAULINO: I'm happy to give  
17 him the opinion. I really prefer that  
18 he not be handed documents. This is  
19 our deposition, so we'll hand him  
20 documents that we want to talk with  
21 him about.  
22 MS. CONROY: Make sure you give  
23 it to Ms. Saulino and she'll hand it  
24 over next time.

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1 Q. (BY MS. SAULINO) Can I see  
2 what you were just handed?  
3 Thank you.  
4 I'm marking what you were just  
5 handed as Exhibit 7 to your deposition.  
6 (Whereupon, Deposition Exhibit  
7 Egilman 7, B.85, was marked for  
8 identification.)  
9 Q. (BY MS. SAULINO) And that is  
10 Exhibit B.85 to your report; correct?  
11 A. Correct.  
12 Q. Okay. And if we look back at  
13 your report, what we see is you list an  
14 opinion in your report, and that is McKesson  
15 and Purdue co-marketed Purdue drugs; right?  
16 A. Correct.  
17 Q. I'm looking at your report,  
18 page 75.  
19 A. Correct.  
20 Q. Okay.  
21 You remember it?  
22 A. It's right here.  
23 Q. I understand that, sir, but I'm  
24 looking at your report.

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1 A. This is part of my report.  
2 This is Exhibit B.85.  
3 Q. Okay. Well, I just want to  
4 confirm that your report -- the only  
5 information that your report itself gives us  
6 is "See Exhibit B.85 hereto attached"; right?  
7 MS. CONROY: Objection.  
8 THE WITNESS: I'm holding that  
9 B.85 exhibit.  
10 MS. SAULINO: We're going to  
11 get there. I just want to go step by  
12 step.  
13 THE WITNESS: That's fine.  
14 Q. (BY MS. SAULINO) Could you  
15 look at your report, please?  
16 A. This is part of my report.  
17 Q. Could you look at page 75 of  
18 your report, please?  
19 A. Sure.  
20 Q. Okay. So at 7.85, you say,  
21 "Opinion, McKesson and Purdue co-marketed  
22 Purdue drugs"; right?  
23 A. Correct.  
24 Q. And underneath that all you say

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1 is, "See Exhibit B.85 hereto attached."  
2 Right?  
3 A. Right.  
4 MS. CONROY: Objection.  
5 Q. (BY MS. SAULINO) Now let's  
6 look at Exhibit B.85, David S. Egilman,  
7 Report Opiate Litigation; right?  
8 A. Do you know what? Why don't I  
9 get my copy of that?  
10 Q. No, sir. I'd like to stick  
11 here with what we're looking at right now.  
12 A. I'm going to get my copy of  
13 B.85.  
14 Q. Then we will mark that as an  
15 exhibit, sir. Is your copy different than  
16 what you've given us?  
17 A. Could be, because my copy is  
18 all marked up. My copies are all marked up.  
19 (Discussion off the record.)  
20 A. So these are mine.  
21 Q. So, just so I'm clear, the box  
22 that you've just put in front of you is a set  
23 of marked-up exhibits that you brought with  
24 you; is that right?

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1 A. Correct.  
2 Q. All right. And these are  
3 different than what you've produced to the  
4 defendants in this litigation.  
5 A. No, they're the same documents,  
6 I think, for the -- almost completely.  
7 Except for I have notes on them and stickies.  
8 Q. And you didn't provide us those  
9 notes and stickies?  
10 A. I just put the notes and  
11 stickies on the last couple of days.  
12 Q. So you didn't provide those to  
13 us; right?  
14 A. That's correct. I didn't  
15 provide them to you.  
16 Q. Okay. And why is it that --  
17 why is it that you need to see your copy in  
18 order to answer questions about Opinion 85?  
19 A. I don't need to see my copy.  
20 My copy -- some of my copies have notes and  
21 stickies on them, and they make the answers  
22 go faster.  
23 Q. Okay. And just for the  
24 Special Master's benefit, you would agree

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1 with me that your notes and stickies have  
2 never been produced to the defendants in this  
3 litigation?  
4 A. That's correct. They were put  
5 on in the last two or three days.  
6 Q. But you prefer to answer  
7 questions about your opinions based on those  
8 that have been marked up with your notes and  
9 stickies?  
10 A. I prefer to use the ones that I  
11 just marked up over the last two or three  
12 days, that's right.  
13 Q. And you wrote these notes and  
14 stickies yourself?  
15 A. Yes.  
16 Q. Did anybody else write them?  
17 A. No.  
18 I've got other notes too I may  
19 refer to too --  
20 Q. All right. Can I see --  
21 A. -- that relate to opinions.  
22 Q. Can I see your version of  
23 Opinion 85?  
24 Thank you.

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1 Okay. There's -- for this  
 2 particular opinion, there's no difference  
 3 between what you have and what I have; is  
 4 that right?  
 5 A. That's correct.  
 6 Q. Okay. And the folder that I  
 7 marked as Exhibit 7, which I think is now  
 8 under your box --  
 9 A. Right.  
 10 Q. -- can you -- do you see that  
 11 folder has a blue dot sticker on it?  
 12 A. Right.  
 13 Q. What does that mean?  
 14 A. I don't know.  
 15 Q. You didn't put that there?  
 16 A. No. That set, the plaintiffs'  
 17 attorneys put together.  
 18 Q. Okay.  
 19 A. This is my set.  
 20 Q. I see.  
 21 A. I don't know what their coding  
 22 was.  
 23 Q. Okay. For purposes of  
 24 Opinion 85 and Exhibit 85, however, you and I

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1 are looking at the same document, which is  
 2 marked as Exhibit 7 to your deposition and is  
 3 in a green folder; right?  
 4 A. Sure.  
 5 Q. Okay. Now, here you have one  
 6 document cited and a portion of it  
 7 screenshotted in -- underneath your opinion;  
 8 right?  
 9 A. Correct.  
 10 Q. Okay. You don't list any  
 11 interviews that supported this opinion;  
 12 right?  
 13 A. Correct.  
 14 Q. You don't list any deposition  
 15 testimony that supported this opinion?  
 16 A. Correct.  
 17 Q. You don't list any other  
 18 documents that supported this opinion; right?  
 19 A. Not here, that's correct.  
 20 Q. You don't list the criteria you  
 21 used to choose this document to support this  
 22 opinion; right?  
 23 A. Correct.  
 24 Q. You don't list the question

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1 that you began with for this opinion; right?  
 2 A. Not explicitly as a question,  
 3 correct.  
 4 Q. Okay.  
 5 And -- so with respect to  
 6 Opinion 85, the only information that you  
 7 have provided is this one portion of this one  
 8 document; right?  
 9 A. No, the only opinion -- the  
 10 only information I provided in this  
 11 particular document. There are other related  
 12 documents which I think I've already  
 13 mentioned before, that relate to the McKesson  
 14 program of marketing drugs for the  
 15 distributors.  
 16 Q. We have no way of knowing which  
 17 of those you used to form this opinion other  
 18 than the one that you put here; right?  
 19 A. No, that's not true. They're  
 20 obvious. You could read them or you can ask  
 21 me about them now.  
 22 Q. And when you say "they're  
 23 obvious," you mean that you didn't provide us  
 24 any guidance in that? You don't have it

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1 anywhere in your report?  
 2 MS. CONROY: Objection.  
 3 THE WITNESS: No, I have it  
 4 here.  
 5 One second and I'll get it for  
 6 you.  
 7 Do you have the McKesson  
 8 Redweld?  
 9 MS. SAULINO: Okay. Can I see  
 10 what you're giving him right now?  
 11 Q. (BY MS. SAULINO) So,  
 12 Dr. Egilman, what you have just asked the  
 13 plaintiffs' lawyers to provide you is what  
 14 you called the McKesson Redweld?  
 15 A. Correct.  
 16 Q. And I only just briefly flipped  
 17 through what you called the McKesson Redweld,  
 18 but is the McKesson Redweld a compilation of  
 19 documents that mention McKesson?  
 20 A. Correct.  
 21 Q. So what you're saying is that  
 22 in order to figure out the basis for any one  
 23 of your opinions that reference McKesson, we  
 24 need to look at all of your opinions that

<p style="text-align: right;">Page 262</p> <p>1 reference McKesson?</p> <p>2 A. Not necessarily. But --</p> <p>3 Q. Okay.</p> <p>4 A. Not necessarily, no.</p> <p>5 Q. Then how would we know, from</p> <p>6 looking at your report, sir, anything but</p> <p>7 other than the one document that you list in</p> <p>8 Exhibit B.85 which you list as the only</p> <p>9 support for your Opinion 85?</p> <p>10 A. You would ask me here. Okay?</p> <p>11 Or you could search the report for all of the</p> <p>12 McKesson opinions, which are searchable by</p> <p>13 McKesson.</p> <p>14 You could pull the documents,</p> <p>15 as I have done, and put them all in a</p> <p>16 Redweld, and then you'd have everything that</p> <p>17 I wrote that might be relevant to all of my</p> <p>18 McKesson opinions.</p> <p>19 Q. Okay. So what you're saying</p> <p>20 is, if I took everything in your report that</p> <p>21 mentioned McKesson, each of the McKesson</p> <p>22 opinions, and put them together, I would have</p> <p>23 the basis for any one of your McKesson</p> <p>24 opinions?</p>	<p style="text-align: right;">Page 264</p> <p>1 Q. So there's no way for us to</p> <p>2 know the full set of evidence that you relied</p> <p>3 on for any one McKesson opinion?</p> <p>4 A. No. Not true.</p> <p>5 Q. You don't believe that's true?</p> <p>6 A. Correct.</p> <p>7 Q. There is a way for us to know</p> <p>8 the full set of evidence that you relied on</p> <p>9 for any one McKesson opinion?</p> <p>10 A. True.</p> <p>11 Q. In your report you say that</p> <p>12 somewhere?</p> <p>13 A. No.</p> <p>14 It depends on the opinion.</p> <p>15 Maybe. Yes and no. Probably</p> <p>16 "yes" and "no" is the answer to that</p> <p>17 question.</p> <p>18 Q. When you say "It depends on the</p> <p>19 opinion," what do you mean?</p> <p>20 A. I mean, some opinions may have</p> <p>21 all of the documents that I could find</p> <p>22 relevant to that opinion.</p> <p>23 Other opinions may -- may be</p> <p>24 supported by other opinions also in the</p>
<p style="text-align: right;">Page 263</p> <p>1 A. No, not necessarily.</p> <p>2 If you wanted to know if there</p> <p>3 were other opinions that related to this</p> <p>4 opinion, then you'd look at the other</p> <p>5 opinions and say, "Oh, I see. That's related</p> <p>6 too," because there's a contract between</p> <p>7 Purdue and McKesson for marketing services,</p> <p>8 which is obviously related to this Redweld.</p> <p>9 Q. You don't provide that roadmap</p> <p>10 in your report, do you?</p> <p>11 A. No. You'd have to actually</p> <p>12 search for all of the McKesson opinions and</p> <p>13 assume and find the contract between McKesson</p> <p>14 and its distributors showing that they were</p> <p>15 marketing for them.</p> <p>16 Q. Okay.</p> <p>17 Now, are you willing to agree,</p> <p>18 sir, that if we take the compilation of each</p> <p>19 of the opinions that mentions McKesson, then</p> <p>20 we would have the full set of pieces of</p> <p>21 evidence that you relied on for -- that you</p> <p>22 possibly relied on for any one McKesson</p> <p>23 opinion?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 265</p> <p>1 report.</p> <p>2 Q. You don't tell us in any of</p> <p>3 your opinions that this opinion also relies</p> <p>4 on evidence related to another opinion;</p> <p>5 right?</p> <p>6 There's no -- there's no</p> <p>7 opinion that says that?</p> <p>8 A. There's no cross-reference</p> <p>9 opinion. I think that's -- I think there are</p> <p>10 a couple of cross-reference opinions, but in</p> <p>11 general that's correct.</p> <p>12 Q. And there's no way for us to</p> <p>13 know if we're looking at any one opinion,</p> <p>14 that this happens to be one of the opinions</p> <p>15 that lists all of the information that you</p> <p>16 relied on?</p> <p>17 A. Well, that's true. Absolutely.</p> <p>18 Because all of the opinions -- all of the</p> <p>19 information I relied on is all the</p> <p>20 information that I reviewed, all of the</p> <p>21 database. I didn't put that in every</p> <p>22 opinion.</p> <p>23 Q. You relied on the entire</p> <p>24 database to come to each and every one of</p>

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1 your opinions?  
 2 A. Sure. I searched the entire  
 3 database. That means I relied and considered  
 4 the documents in the database. The same with  
 5 the medical literature.  
 6 Q. And you did all of that in four  
 7 months?  
 8 A. Sure.  
 9 Q. You choose only to excerpt one  
 10 single document for Opinion 85; right?  
 11 A. Isn't it 86?  
 12 Q. No, it was 85.  
 13 A. Okay. You're right, that's 85.  
 14 That's correct.  
 15 Q. So is it fair to say that  
 16 that's what you considered to be the best  
 17 evidence supporting that opinion?  
 18 A. Yeah. It's a piece of evidence  
 19 that supports the opinion.  
 20 Q. There's no way for us to know  
 21 whether you considered it to be the best of  
 22 the pieces of evidence that you think support  
 23 the opinion?  
 24 A. I haven't ranked all the

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1 evidence that support the opinion. I think  
 2 this and the contract together support the  
 3 opinion. This is a -- this is -- of what I  
 4 could find, sufficient evidence to support  
 5 the opinion.  
 6 Q. Okay. So --  
 7 A. I'm not trying in each of these  
 8 opinions to give you every piece of evidence  
 9 that may support the opinion. I didn't have  
 10 enough time to do that.  
 11 Q. Well, you had enough time to  
 12 come to the conclusion; right?  
 13 A. I did.  
 14 Q. You had enough --  
 15 A. With the evidence that I  
 16 thought I had.  
 17 Q. And you had enough time to  
 18 figure out that you had enough evidence for  
 19 that conclusion; right?  
 20 A. Right.  
 21 Q. So surely you had looked at the  
 22 evidence in order to come to that conclusion;  
 23 right?  
 24 A. Right.

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1 Q. But you didn't have time to  
 2 then simply note the documents?  
 3 MS. CONROY: Objection.  
 4 THE WITNESS: I couldn't note  
 5 for every opinion all the evidence  
 6 that I looked at to -- that related to  
 7 that particular opinion. It would  
 8 take too long and it would be too  
 9 voluminous.  
 10 Q. (BY MS. SAULINO) We looked  
 11 earlier today at your steps of your  
 12 evidence-based medicine method; right?  
 13 A. Correct.  
 14 Q. Okay. And on page 41, you list  
 15 step 2. 3.3.2.  
 16 A. Hang on one second.  
 17 What page?  
 18 Q. Page 41.  
 19 A. Okay.  
 20 Q. Step 2 is "Systematic retrieval  
 21 of best evidence available"; right?  
 22 A. Correct.  
 23 Q. So you didn't do that here?  
 24 MS. CONROY: Objection.

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1 THE WITNESS: Well, I did the  
 2 best I could with the time I had.  
 3 Q. (BY MS. SAULINO) So you're  
 4 saying you didn't have enough time to provide  
 5 an adequate expert report?  
 6 A. No.  
 7 I -- what I'm saying is, I  
 8 got -- what I gave you, in combination with  
 9 that last example, is the best evidence that  
 10 I could find.  
 11 Q. Okay. So Exhibit 7 is the best  
 12 evidence that you could find for Opinion 85?  
 13 A. In combination with the other  
 14 McKesson documents that I said that are  
 15 relevant to the same question.  
 16 Q. And that combination that  
 17 you're telling us now is nowhere documented  
 18 in your report?  
 19 A. The fact that it's a  
 20 combination? It's obvious in the report. I  
 21 think I talked -- there's a contract --  
 22 there's an opinion that says McKesson had a  
 23 contract to market for distributors. And it  
 24 specifically talks about some of the Purdue



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1 marketing that they did. And then so to  
2 be -- I think it's obvious that those  
3 opinions would go together.  
4 Q. You think it's obvious?  
5 A. Correct.  
6 Q. Okay. But you don't provide  
7 that information in your report.  
8 A. Correct.  
9 Q. And you think it's obvious  
10 because the word "McKesson" is in the  
11 opinion; right?  
12 A. No.  
13 Q. Well, you don't group the  
14 McKesson opinions together, do you?  
15 A. Correct.  
16 Q. Okay. So that wasn't any  
17 indicator to us that we should be looking at  
18 them together; right? The way you -- the way  
19 you numbered them?  
20 A. Correct.  
21 Q. Okay.  
22 A. The numbering was not a clue.  
23 Q. Okay.  
24 All right. On page 132 of your

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1 report.  
2 A. Yes.  
3 Q. Second opinion from the bottom,  
4 Opinion 7.468 is opinion "McKesson blames  
5 manufacturers and avoids its own  
6 responsibility"; right?  
7 A. Yes.  
8 Q. And you then say, "See Exhibit  
9 B.468" hereto attached; right?  
10 A. Right.  
11 Q. And that's all that's listed in  
12 the core of the report.  
13 MS. CONROY: Objection.  
14 THE WITNESS: Correct.  
15 Q. (BY MS. SAULINO) Then we have  
16 to then look at the exhibits; right?  
17 A. Correct.  
18 Q. So then we go to Exhibit B.468;  
19 right?  
20 A. Go ahead.  
21 Q. Are you looking for your copy  
22 of B.468?  
23 A. I am.  
24 Do you have a copy?

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1 Q. I do.  
2 A. Okay. Then I'll take your  
3 copy. What I've got in this box, it doesn't  
4 look like I put a sticky or any notes.  
5 Q. I'm handing you what we've  
6 marked as Exhibit 8 to your deposition.  
7 (Whereupon, Deposition Exhibit  
8 Egilman 8, Opinion - McKesson blames  
9 manufacturers and avoids its own  
10 responsibility, was marked for  
11 identification.)  
12 Q. (BY MS. SAULINO) Okay. So  
13 looking at Exhibit B.468.  
14 A. Okay. This is airline crash.  
15 Q. The first page.  
16 MS. CONROY: Did you bring  
17 copies?  
18 MS. SAULINO: Yep. You guys  
19 have a bunch of them back there, too.  
20 MS. CONROY: I want to make  
21 sure you hand them to me.  
22 Q. (BY MS. SAULINO) B.468. Are  
23 you with me?  
24 A. Yeah. I do have it here with

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1 stickies on it and notes, so I do want to get  
2 mine.  
3 Q. Well, my question about this is  
4 pretty simple, Dr. Egilman.  
5 A. Okay. Then go ahead.  
6 Q. You only cite one document  
7 here; right?  
8 A. Right.  
9 Q. Okay. You don't provide any  
10 questions that you were seeking to answer;  
11 right?  
12 A. Correct.  
13 Q. You don't cite to any  
14 interviews that supported this opinion?  
15 A. Correct.  
16 Q. You don't cite any deposition  
17 testimony that supported this opinion?  
18 A. Correct.  
19 Q. You don't cite any other  
20 documents that supported this opinion?  
21 A. Correct.  
22 Q. You don't provide the criteria  
23 by which you came to decide that this  
24 document was supportive of this opinion?

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1 A. I don't know how I would do  
2 that.  
3 Q. Okay. And what your opinion is  
4 is "McKesson blames manufacturers and avoids  
5 its own responsibility"; right?  
6 A. Correct.  
7 Q. And so you've chosen one  
8 document as the best evidence of that?  
9 A. Correct.  
10 Q. And other than this one  
11 document, we have no indication written in  
12 your report anywhere or in your exhibit that  
13 you used anything else to come to this  
14 opinion; right?  
15 MS. CONROY: Objection.  
16 THE WITNESS: Correct.  
17 Q. (BY MS. SAULINO) You don't  
18 provide us any roadmap to how you reevaluated  
19 any questions once you looked at other data  
20 or documents; right?  
21 A. For this opinion?  
22 Q. Yes.  
23 A. Correct.  
24 Q. And you don't provide us any

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1 indication of whether you revised your  
2 hypotheses to ensure that they held true  
3 under repeated study; right? For this  
4 opinion?  
5 A. Not in the report, that's  
6 correct.  
7 Q. All right. Let's look at --  
8 A. Did you want to mark this one  
9 or no?  
10 Q. We did mark it. I gave you the  
11 marked copy.  
12 A. Oh, I'm sorry.  
13 Do you want to take -- hang on  
14 one second while I give this to the court  
15 reporter.  
16 MS. SAULINO: Sure.  
17 Q. (BY MS. SAULINO) Let's look at  
18 Exhibit -- let's look at page 77 of your  
19 report.  
20 A. Okay.  
21 Q. Do you see Opinion 7.100?  
22 A. I do.  
23 Q. Opinion "Healthcare  
24 Distribution Management Association, HDMA,

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1 now HDA, was responsible for sale of  
2 unapproved opioids"; right?  
3 A. Correct.  
4 Q. And you say, "See Exhibit B.100  
5 hereto attached"; right?  
6 A. Correct.  
7 Q. And we -- I'm going to hand you  
8 Exhibit B.100, unless you have a different  
9 version of it.  
10 A. Which number is it?  
11 Q. 100.  
12 A. I have a different version.  
13 Q. Okay. Shall we mark that one?  
14 A. If you like.  
15 Q. Okay. So I've handed you what  
16 we've marked as Exhibit 9 to your deposition,  
17 which is your version of Exhibit 100 to your  
18 report.  
19 A. Right.  
20 (Whereupon, Deposition Exhibit  
21 Egilman 9, Opinion - HDMA was  
22 responsible for sale of unapproved  
23 opioids, was marked for  
24 identification.)

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1 Q. (BY MS. SAULINO) And again,  
2 here, for Opinion 100, you cite a single  
3 exhibit; right?  
4 A. Well, I cite a single exhibit,  
5 but it references several FDA documents.  
6 Q. Your opinion does not reference  
7 several FDA documents; right? The exhibit  
8 itself does?  
9 MS. CONROY: Objection.  
10 THE WITNESS: The exhibit,  
11 which is the basis of the opinion,  
12 references several FDA documents.  
13 Q. (BY MS. SAULINO) And when I  
14 say, "The exhibit itself does," I mean not  
15 your writing, but in fact the e-mail chain  
16 dated Monday April 27, 2009.  
17 A. That's correct.  
18 Q. Okay. So you're saying that  
19 the FDA documents that are referenced in the  
20 document that you have screenshotted into  
21 Exhibit 100 should also be considered part of  
22 the basis of your opinion?  
23 A. Yes.  
24 Q. Okay. And that's everything

<p style="text-align: right;">Page 278</p> <p>1 that is the basis of your Opinion 100?</p> <p>2 A. Correct.</p> <p>3 Q. And so there were no other</p> <p>4 interviews that supported this opinion?</p> <p>5 A. Correct. I didn't know I could</p> <p>6 interview your personnel.</p> <p>7 Q. No deposition testimony?</p> <p>8 A. Correct. I can't take</p> <p>9 depositions for sure.</p> <p>10 Q. Well, you said you read a</p> <p>11 number of them, sir.</p> <p>12 A. Right. There's no deposition</p> <p>13 testimony on this issue.</p> <p>14 Q. Did you look?</p> <p>15 A. Yes.</p> <p>16 Q. And so you don't cite any</p> <p>17 deposition testimony about the HDMA at all</p> <p>18 here, right?</p> <p>19 A. Not on this opinion. That's</p> <p>20 right.</p> <p>21 Q. Okay.</p> <p>22 There's no other data listed</p> <p>23 here; right?</p> <p>24 MS. CONROY: Objection.</p>	<p style="text-align: right;">Page 280</p> <p>1 FDA document, we would know that you started</p> <p>2 with a different original hypothesis and</p> <p>3 revised it?</p> <p>4 A. No.</p> <p>5 Q. Okay. Well, that was my</p> <p>6 question.</p> <p>7 A. No, it wasn't.</p> <p>8 Q. There's no way for to us know</p> <p>9 if you started with a different original</p> <p>10 hypothesis and revised it; right?</p> <p>11 A. That's correct.</p> <p>12 Q. And you say checking the</p> <p>13 underlying FDA documents. What do you</p> <p>14 believe that would provide us?</p> <p>15 A. Well, that was under the</p> <p>16 question about whether you'd done -- checked</p> <p>17 other supporting documents or contradictory</p> <p>18 evidence that indicated that this was not</p> <p>19 true.</p> <p>20 Q. And so you're saying you</p> <p>21 checked the FDA documents that were cited in</p> <p>22 this e-mail --</p> <p>23 A. Correct.</p> <p>24 Q. -- as contradictory evidence?</p>
<p style="text-align: right;">Page 279</p> <p>1 THE WITNESS: Correct.</p> <p>2 Q. (BY MS. SAULINO) No documents</p> <p>3 other than those we've just talked about;</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 Q. There's no way that we can see</p> <p>7 your original question or hypothesis for this</p> <p>8 opinion; right?</p> <p>9 A. Right. You'd have to put a</p> <p>10 "did" in front of the opinion.</p> <p>11 Q. But you don't tell us here;</p> <p>12 right?</p> <p>13 A. I didn't put the "did" in.</p> <p>14 Q. You didn't give us any</p> <p>15 indication that we were supposed to assume a</p> <p>16 "did"; right?</p> <p>17 A. Correct.</p> <p>18 Q. And there's no indication here</p> <p>19 that you've revised your hypothesis or</p> <p>20 ensured it held true under repeated study;</p> <p>21 right?</p> <p>22 A. Except for checking the</p> <p>23 underlying of FDA documents, right.</p> <p>24 Q. So by checking the underlying</p>	<p style="text-align: right;">Page 281</p> <p>1 A. No. As either confirmatory or</p> <p>2 contradictory.</p> <p>3 Q. Which one was it?</p> <p>4 A. Confirmatory.</p> <p>5 Q. But you didn't provide those</p> <p>6 documents here?</p> <p>7 MS. CONROY: Objection.</p> <p>8 THE WITNESS: No, I just cited</p> <p>9 them in the context of -- they were in</p> <p>10 the document that was the basis of the</p> <p>11 opinion.</p> <p>12 Q. (BY MS. SAULINO) And you</p> <p>13 didn't explain how those documents were</p> <p>14 confirmatory of your opinion. Right?</p> <p>15 A. No, I didn't explain that, but</p> <p>16 there's a quote from the documents that's a</p> <p>17 correct quote in this e-mail.</p> <p>18 Q. In the e-mail that you're</p> <p>19 citing, there is a quote from one of the FDA</p> <p>20 documents? That's what you're saying?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. That's not your quote.</p> <p>23 That's not something you pulled out; right?</p> <p>24 MS. CONROY: Objection.</p>

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1 THE WITNESS: That's correct.  
2 It says it's an FDA quote.  
3 Q. (BY MS. SAULINO) And you're  
4 aware, correct, Dr. Egilman, that the HDMA is  
5 a trade association?  
6 A. I am.  
7 Q. And the HDMA doesn't actually  
8 sell anything?  
9 A. Do you mean sell any product?  
10 Q. Right.  
11 A. That's correct.  
12 Q. Okay.  
13 A. Are you done with this one?  
14 Q. I am. Thank you.  
15 A. I've been accused of stealing  
16 exhibits before, so I just wanted to make  
17 sure I give them to the court reporter.  
18 Q. I'm sure she appreciates it.  
19 Let's look at page 82 of your  
20 report.  
21 A. Okay.  
22 Okay.  
23 Q. And on page 82 you cite  
24 Opinion 7.135. Opinion "Distributor

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1 marketing drove sales"; right?  
2 A. Right.  
3 Q. And you refer then to Exhibit  
4 B.1 -- B.135 as your support; right?  
5 A. Correct.  
6 Okay. Go ahead.  
7 Q. So I'd like to mark whatever  
8 version you're planning to use.  
9 A. I'll use whatever you give me  
10 because I don't have any notes on this one.  
11 Q. Okay.  
12 I'm handing you what we've  
13 marked as Exhibit 10 to your deposition,  
14 Dr. Egilman.  
15 (Whereupon, Deposition Exhibit  
16 Egilman 10, Opinion - Distributor  
17 marketing drove sales, was marked for  
18 identification.)  
19 Q. (BY MS. SAULINO) And this is  
20 Exhibit B.135 to your report; right?  
21 A. Correct.  
22 Q. And here you have a screenshot  
23 of a document on page 1; right?  
24 A. Right.

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1 Q. And then you have a second  
2 document that starts on page 2 and goes  
3 through the rest of the exhibit; right?  
4 A. Correct.  
5 Q. Okay. And those are the only  
6 two documents that you provide as a basis for  
7 your opinion that distributor marketing drove  
8 sales; right?  
9 A. Correct.  
10 Q. You don't provide any  
11 deposition testimony; right?  
12 A. Correct.  
13 Q. You don't provide any other  
14 documents here on this exhibit; right?  
15 A. Correct.  
16 Q. You don't provide any original  
17 questions or hypotheses that you asked;  
18 right?  
19 A. Correct.  
20 Q. You don't provide any  
21 information that would lead us to believe  
22 that you used -- that you revised your  
23 hypotheses or ensured that they held true  
24 under repeated study; right?

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1 A. Correct.  
2 Q. Okay. So all we have are these  
3 two documents; right?  
4 A. Correct.  
5 Q. Okay. And these two documents  
6 are, in fact -- they in fact relate to two  
7 different pharmaceutical manufacturers;  
8 right?  
9 A. Correct.  
10 Q. So the first document on the  
11 first page relates to Purdue Pharma; right?  
12 A. Correct.  
13 Q. And the second document  
14 starting on page 2 relates to Cephalon;  
15 right?  
16 A. Correct.  
17 Q. And, in fact, the document that  
18 starts on page 2 is an unsigned contract;  
19 right?  
20 If you look at the very last  
21 page?  
22 A. Correct.  
23 Q. So based on this document, you  
24 have no way of knowing whether it actually

<p style="text-align: right;">Page 286</p> <p>1 happened; right?</p> <p>2 A. Based on this particular</p> <p>3 document? Correct.</p> <p>4 Q. Okay. And if you look at the</p> <p>5 second page of this document, which is page 3</p> <p>6 of the exhibit, you see that the objective of</p> <p>7 this document was "To educate pharmacists</p> <p>8 regarding new REMS requirements for Actiq and</p> <p>9 Fentora; right?</p> <p>10 A. No, not exactly.</p> <p>11 Q. Okay. Sir, if you'd look with</p> <p>12 me at the third line of writing on this page.</p> <p>13 Well, the second line says</p> <p>14 "Objective," and then the third line says</p> <p>15 "Educate pharmacists regarding new REMS</p> <p>16 requirements for Actiq and Fentora." You'd</p> <p>17 agree with me that that's what is written</p> <p>18 there; right?</p> <p>19 A. Correct.</p> <p>20 In the section you read.</p> <p>21 Q. All right. We can put that</p> <p>22 aside.</p> <p>23 If I could look at page 65 of</p> <p>24 your report, please. The top?</p>	<p style="text-align: right;">Page 288</p> <p>1 Q. (BY MS. SAULINO) And looking</p> <p>2 at Exhibit 11 --</p> <p>3 A. Okay.</p> <p>4 Q. -- it appears that you cite for</p> <p>5 this opinion one document; right?</p> <p>6 A. Correct.</p> <p>7 Q. And it is an e-mail that you</p> <p>8 have screenshotted onto the page; right?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And you provided some</p> <p>11 red arrows there; right?</p> <p>12 A. Correct.</p> <p>13 Q. You don't list any other</p> <p>14 documents; right?</p> <p>15 A. Not for this opinion -- not in</p> <p>16 this -- not in Opinion B.21, but there are a</p> <p>17 lot of other documents that relate to this</p> <p>18 issue in the other opinions.</p> <p>19 Q. Okay. You don't provide any</p> <p>20 cross-referencing of those other opinions;</p> <p>21 right?</p> <p>22 A. Correct. You'd have to read</p> <p>23 them.</p> <p>24 Q. You don't provide any way --</p>
<p style="text-align: right;">Page 287</p> <p>1 A. Okay.</p> <p>2 Q. Do you see Opinion 7.21?</p> <p>3 A. I do.</p> <p>4 Q. And your opinion there is</p> <p>5 "Walgreens' solution to red flag stores was</p> <p>6 to find a distributor who would sell to them.</p> <p>7 All three Walgreens distributor facilities</p> <p>8 failed to implement SOM procedures"; right?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And then you refer to</p> <p>11 Exhibit B.21; right?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. I have a copy if you</p> <p>14 would like it.</p> <p>15 A. Okay. I'll use yours.</p> <p>16 Q. Okay. I'm handing you what's</p> <p>17 been marked as Exhibit 11.</p> <p>18 (Whereupon, Deposition Exhibit</p> <p>19 Egilman 11, Opinion - WAG solution to</p> <p>20 red flagged stores was to find a</p> <p>21 distributor who would sell to them.</p> <p>22 All 3 WAG distributor facilities</p> <p>23 failed to implement SOM procedures,</p> <p>24 was marked for identification.)</p>	<p style="text-align: right;">Page 289</p> <p>1 any roadmap that would tell us precisely</p> <p>2 which of your other 490 opinions we should be</p> <p>3 looking at; right?</p> <p>4 MS. CONROY: Objection.</p> <p>5 THE WITNESS: No.</p> <p>6 I think it's pretty clear when</p> <p>7 you look at the documents that they</p> <p>8 relate to the -- this situation</p> <p>9 between Walgreens, Jupiter, Cardinal,</p> <p>10 and ABC. You know, there's a whole</p> <p>11 narrative there.</p> <p>12 Q. (BY MS. SAULINO) You don't</p> <p>13 write anywhere in this report or its attached</p> <p>14 exhibits what you believe is obvious about</p> <p>15 the situation you just described; right?</p> <p>16 A. No.</p> <p>17 Q. You don't provide any kind of</p> <p>18 roadmap to your initial hypotheses; right?</p> <p>19 MS. CONROY: Objection.</p> <p>20 THE WITNESS: That's true.</p> <p>21 Q. (BY MS. SAULINO) You don't</p> <p>22 provide the question that you were looking to</p> <p>23 answer; right?</p> <p>24 A. That comes under the assignment</p>



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1 question generally, so that's -- that's where  
2 that question is.  
3 Q. Well, you didn't provide the  
4 assignment question in your report either,  
5 did you?  
6 A. That's correct.  
7 Q. Okay.  
8 You don't show us any  
9 re-evaluation from other data or documents in  
10 this opinion; right?  
11 A. No. There are other documents  
12 that relate to this situation.  
13 Q. But you don't list them here;  
14 right?  
15 A. They're not listed in B.21, but  
16 they are otherwise in the report, including  
17 reference to Jupiter Walgreens.  
18 I cite the Walgreens  
19 \$80 million payment for violating DEA rules  
20 on selling and a variety of other documents.  
21 Q. You don't cite that here? In  
22 Exhibit B.21?  
23 A. I do not cite those other  
24 opinions that relate to this opinion in this

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1 agreement. That is correct.  
2 Q. Nowhere do you tell us that  
3 those other opinions relate to this opinion,  
4 explicitly in your report. Right?  
5 A. That's correct.  
6 Q. You don't cite any deposition  
7 testimony here; right?  
8 A. Correct.  
9 Q. Okay. And this single document  
10 that we're looking at right here, that you  
11 provide here, as support for your opinion,  
12 doesn't even mention anywhere in it SOM  
13 procedures; right?  
14 A. By name, correct.  
15 MS. SAULINO: Okay. We can go  
16 off the record.  
17 THE VIDEOGRAPHER: Off the  
18 record. 4:13.  
19 (Recess taken, 4:12 p.m. to  
20 4:25 p.m.)  
21 THE VIDEOGRAPHER: We are back  
22 on the record at 4:26.  
23 Q. (BY MS. SAULINO) Okay.  
24 Dr. Egilman, a number of your opinions in

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1 your report pertain to what you call "the  
2 venture." Correct?  
3 A. Yes.  
4 Q. And on page 51 of your report,  
5 you define the venture at 4.4; right?  
6 A. Correct.  
7 Q. And you say, "As referred to  
8 herein, 'the venture' refers to all  
9 defendants in the opiate litigation,  
10 including their associated individuals and/or  
11 organizations acting in a concerted fashion  
12 separately or together to effect a particular  
13 objective"; right?  
14 A. Correct.  
15 Q. That's a definition that you  
16 came up with; right?  
17 A. I'm sure I discussed it with  
18 the lawyers.  
19 Q. Okay. Do you remember when  
20 that was?  
21 A. Over the last two or three  
22 months.  
23 Q. And was that a definition that  
24 you came up with or that they gave you?

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1 A. It was a discussed definition  
2 between the two of us. I don't know -- I  
3 can't tell you which words came from whom.  
4 Q. Okay. So this definition is  
5 not something that was the result of your  
6 iterative process of research?  
7 A. Well, that's not necessarily  
8 true, no.  
9 Q. Well, you just said that it  
10 came from a discussion with the plaintiffs'  
11 lawyers; right?  
12 A. Yeah, but it also -- my part of  
13 that came from reading the documents and  
14 trying to figure out what had gone on.  
15 Q. Are discussions with  
16 plaintiffs' lawyers typically a part of your  
17 expert process?  
18 A. Certainly they are. Depends on  
19 what the issues are. For example, I was  
20 asking for depositions --  
21 Q. Okay.  
22 A. -- to be taken. I was asking  
23 for further discovery to be taken.  
24 Q. You've answered my question,

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1 sir. You said, "Certainly they are."  
2 A. Yeah, but I have to -- it's not  
3 everything. It's limited to certain areas.  
4 Q. Okay.  
5 A. So it's just "Certainly they  
6 are" is a misleading little snippet. Which I  
7 prefer not to leave on the record alone.  
8 Q. Well, sir, I asked you: "Are  
9 discussions with plaintiffs' lawyers  
10 typically a part of your expert process?"  
11 And your answer was, "Certainly  
12 they are. Depends on what the issues are,"  
13 and then you started giving examples.  
14 I don't think we need any  
15 further examples. I understand your answer.  
16 Okay?  
17 A. No. But go right ahead.  
18 Q. My next question for you,  
19 though, is --  
20 A. Just let my put on the record  
21 my answer is incomplete. Now go ahead.  
22 Q. My question for you, sir, is  
23 your definition for "the venture," do you  
24 document anywhere here the iterative process

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1 that you went through to come up with this  
2 definition?  
3 A. No. And there's -- there's, I  
4 think there are at least three different  
5 times when I discussed the venture in the  
6 report, and it's expanded on in at least one  
7 of those times.  
8 Q. Okay. So looking at the  
9 definitions that you provide on page 51, we  
10 can't rely on that definition?  
11 MS. CONROY: Objection.  
12 THE WITNESS: No, you can rely  
13 on that definition. There's an  
14 expanded version of this definition --  
15 well, first of all, let me see  
16 Exhibit 473. Maybe we're talking  
17 about the same thing.  
18 Q. (BY MS. SAULINO) We will get  
19 to Exhibit 473. I'm just looking at the  
20 definition that you put here in your report  
21 here, sir, under the section called  
22 "Definitions."  
23 A. Okay. Well, hold on one  
24 second.

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1 Q. I have a copy if you need it.  
2 A. Sure.  
3 Q. I've handed you Exhibit 12 to  
4 your deposition, Dr. Egilman.  
5 (Whereupon, Deposition Exhibit  
6 Egilman 12, Definition - "Venture"  
7 refers to all defendants (including  
8 their associated individuals and/or  
9 organizations) and covers all aspects  
10 of marketing, distribution, and supply  
11 they engaged in, was marked for  
12 identification.)  
13 THE WITNESS: Right. So this  
14 is exactly what I was referring to.  
15 This is -- the opinion's not limited  
16 to the definition in 4.4, but there's  
17 an expanded basis for the opinion  
18 which elaborates more -- elaborates on  
19 what that means.  
20 Q. (BY MS. SAULINO) I see that,  
21 sir.  
22 This does not provide us any  
23 information about how you came to the  
24 opinion; correct?

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1 A. You mean came to the  
2 definition? Or the opinion?  
3 It's not an opinion; it's a  
4 definition.  
5 Q. Okay. Actually, sir, it is  
6 both. If you look at page 133 of your report  
7 at 7.473?  
8 A. What page?  
9 What page?  
10 Q. 133.  
11 A. Okay. Where?  
12 Q. I'm looking at 7.473, which  
13 also refers to Exhibit B.473, which is the  
14 exhibit that we're looking at right now which  
15 is Exhibit 12 to your deposition.  
16 A. This is a different issue.  
17 Q. Okay.  
18 A. This is -- this is called  
19 "Opinion definitions." It's really a  
20 definition. I mean, so you could call that  
21 an error or a typo.  
22 This should be "Definition."  
23 Q. Well, it's listed in your  
24 Opinions section as 473, right?

<p style="text-align: right;">Page 298</p> <p>1 A. Yeah, it's listed as 473 as an  2 opinion, but if you'll look at the actual  3 opinion, it's listed as a definition.  4 Q. Okay. So this is not an  5 opinion?  6 A. It's a definition. If you want  7 to call it an opinion, I'm not offended.  8 Q. Sir, I'm looking at what you  9 put in your report, which says that it was an  10 opinion, and it's in the opinion section, and  11 it cites the very same document that is cited  12 in the "Definitions" section.  13 A. Well, the same document is --  14 has two different headings to it. In the  15 summary of opinions, it's listed as an  16 opinion. But if you look at 473, the word  17 "opinion" doesn't appear. Okay? Whereas  18 most of my opinions actually have the word  19 "opinion." Here, it calls it -- it says  20 "Definition."  21 So I would say that what you  22 see on 133, the word "opinion" -- I mean, it  23 doesn't really matter, to tell you the truth.  24 You can call it an opinion. You can call it</p>	<p style="text-align: right;">Page 300</p> <p>1 Q. Okay. And so you're saying now  2 that you did not intend 7.473 to be an  3 opinion in your report?  4 A. No, I intended 473 to be what  5 473 says.  6 Q. Which is a definition?  7 A. Which is a definition.  8 I also intended 473, the  9 summary of 473 to be identical to the actual  10 opinion -- the actual definition 473, so  11 what's in this summary of opinions is missing  12 the last sentence.  13 Q. Okay.  14 And then under -- and then you  15 provide a basis; right? For the definition?  16 A. Correct.  17 Q. Okay. And the basis for the  18 definition is -- you provide two sentences,  19 and then the second sentence has an A, B, and  20 C; right?  21 A. Correct.  22 Q. Okay. You don't cite any  23 documents; right?  24 A. Not in this definition,</p>
<p style="text-align: right;">Page 299</p> <p>1 a definition. Because the definition is  2 probably an opinion. But it's definitely --  3 I meant it to frame what I was referring to  4 when I used the word "venture."  5 Q. Okay. Well, as you noted,  6 these two definitions on page 133 and on  7 page 51 actually say different things; right?  8 A. Not really. I mean, because  9 one says "Opinion-Definition" and the other  10 says "Definition" without "Opinion."  11 Q. I'm referring to what happens  12 after the word "Definition."  13 A. Yeah, there's a modifying  14 sentence in 473 that doesn't appear in --  15 that appears in 473 that was not typed into  16 the same opinion when it was typed that  17 appears on page 133.  18 Q. Did you do that typing  19 yourself, sir?  20 A. I don't think I did that  21 typing.  22 Q. Who did?  23 A. I don't know. Probably one of  24 my staff did the typing.</p>	<p style="text-align: right;">Page 301</p> <p>1 correct.  2 Q. Well, not in -- not on page 51  3 in the "Definitions" sections; right?  4 A. Correct.  5 Q. Well, except for Exhibit B.473.  6 A. Correct.  7 Q. And not on page 132 under  8 opinion -- I'm sorry, and not on page 133,  9 under Opinion 7.473; right?  10 A. Correct.  11 Q. Except for Exhibit B.473;  12 right?  13 A. Correct.  14 Q. And then if we look at  15 Exhibit B.473, there are no documents cited  16 here either; right?  17 A. Correct.  18 Q. Okay. You also don't cite to  19 any deposition testimony; right?  20 A. Correct.  21 Q. You also don't cite to any  22 literature; right?  23 A. Not here.  24 Q. Right. You don't cite to any</p>

<p style="text-align: right;">Page 302</p> <p>1 literature here, right?</p> <p>2 A. Not in this opinion, not in</p> <p>3 473. There's other literature cited to that</p> <p>4 describes the same activity by Saper.</p> <p>5 Saper's speech.</p> <p>6 Q. Okay.</p> <p>7 A. He didn't call it a venture.</p> <p>8 He called it a narco pharma.</p> <p>9 Q. Okay. And you don't link that</p> <p>10 citation to this definition; right?</p> <p>11 A. I didn't use "narco pharma."</p> <p>12 Q. So you don't link that citation</p> <p>13 to this definition in your report; right?</p> <p>14 A. Correct. But he describes the</p> <p>15 same activities in his 2008-2009 talk, where</p> <p>16 he calls what I call the venture, narco</p> <p>17 pharma.</p> <p>18 Q. So you don't provide anywhere</p> <p>19 in either of the places where you cite the</p> <p>20 definition nor in Exhibit B.473, anywhere to</p> <p>21 look to see how you came to the conclusion</p> <p>22 that this was the definition for venture;</p> <p>23 right?</p> <p>24 A. No, it's my definition for</p>	<p style="text-align: right;">Page 304</p> <p>1 we're out of stickers.</p> <p>2 Q. (BY MS. SAULINO) If you could</p> <p>3 look at page 135 of your report.</p> <p>4 A. Sure.</p> <p>5 Q. The very last opinion on that</p> <p>6 page.</p> <p>7 A. Yeah.</p> <p>8 Q. Are you there?</p> <p>9 A. I just want to -- these --</p> <p>10 these things are all being named Egilman?</p> <p>11 All of these exhibits?</p> <p>12 MS. SAULINO: Oh, I hadn't</p> <p>13 noticed that.</p> <p>14 THE WITNESS: Yeah, I did</p> <p>15 notice that. Is that how you want it</p> <p>16 to be?</p> <p>17 MS. SAULINO: We probably</p> <p>18 should correct it to just Egilman.</p> <p>19 THE WITNESS: That would be my</p> <p>20 thought, but I'm not thinking here.</p> <p>21 MS. SAULINO: Okay. Well,</p> <p>22 thank you for that.</p> <p>23 (Discussion off the record.)</p> <p>24 MS. SAULINO: Thank you. We'll</p>
<p style="text-align: right;">Page 303</p> <p>1 venture.</p> <p>2 Q. Well, it's yours and the</p> <p>3 plaintiffs' lawyers; right?</p> <p>4 A. Yeah, they agreed with this</p> <p>5 definition of venture.</p> <p>6 Q. And if they had disagreed, you</p> <p>7 would have changed it?</p> <p>8 A. No. You don't know me very</p> <p>9 well.</p> <p>10 Q. Well, you told me just a couple</p> <p>11 of minutes ago that this was a definition</p> <p>12 that was created in combination with them;</p> <p>13 right?</p> <p>14 A. In conversation with them, but</p> <p>15 if they disagreed with something that I</p> <p>16 thought should be here, I wouldn't change it.</p> <p>17 MS. SAULINO: Whoever is on the</p> <p>18 phone, can you mute, please?</p> <p>19 Q. (BY MS. SAULINO) Well, now,</p> <p>20 let's look at --</p> <p>21 A. Are you done with this one?</p> <p>22 Q. For now, but don't give it</p> <p>23 away. Keep it nearby.</p> <p>24 MS. SAULINO: And, Debbie,</p>	<p style="text-align: right;">Page 305</p> <p>1 discuss it with the court reporter at</p> <p>2 the next break and we'll work it out.</p> <p>3 Thank you.</p> <p>4 THE WITNESS: No problem.</p> <p>5 Sorry to interrupt.</p> <p>6 Q. (BY MS. SAULINO) So last</p> <p>7 opinion on page 135. 7.488.</p> <p>8 "Opinion, these are the members</p> <p>9 of the venture." Do you see that?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. I have a copy of</p> <p>12 Exhibit B.488. If you'd like it.</p> <p>13 A. Right. You've got to include</p> <p>14 489, because that also includes additional</p> <p>15 members of the venture.</p> <p>16 Q. Well, you don't cross-reference</p> <p>17 those two --</p> <p>18 A. No, they're just sequential.</p> <p>19 Q. Okay. But you told me earlier</p> <p>20 that they weren't necessarily sequential when</p> <p>21 they went together; right?</p> <p>22 A. They aren't. In this case</p> <p>23 they're sequential.</p> <p>24 Q. And so there was no way for us</p>

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1 to know that those two were supposed to be  
2 read together except that they were  
3 sequential?  
4 A. No.  
5 Q. You don't say anywhere in your  
6 report that those two opinions are supposed  
7 to be read together; right?  
8 A. Explicitly in those words? No.  
9 Q. Okay.  
10 Well, let's look at 4.88 first.  
11 Do you want it or do you have  
12 your own copy?  
13 A. I don't think it matters. I'll  
14 have this one.  
15 Q. Okay.  
16 MS. SAULINO: It's marked as  
17 Exhibit 14.  
18 (Whereupon, Deposition Exhibit  
19 Egilman 14, Opinion - these are the  
20 members on the "venture" with two  
21 Redweld folders", was marked for  
22 identification.)  
23 MS. SAULINO: I think we  
24 realized that we were missing a 13.

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1 THE WITNESS: 13 is always good  
2 to be left out.  
3 Q. (BY MS. SAULINO) If you look  
4 at Exhibit 4.88 under "Basis," you provide a  
5 spreadsheet with colors; right?  
6 A. Correct.  
7 Q. And it is four pages long and  
8 then you provide some citations on page 5;  
9 right?  
10 A. Right.  
11 Q. Okay. So these are the members  
12 of the venture; is that right?  
13 A. Across the top.  
14 Q. Across the top of what?  
15 A. Across the top. Name, type.  
16 The companies across the top are the members  
17 of the venture. And they were also in red.  
18 Q. And where do you explain that  
19 in your report or in this exhibit?  
20 A. I don't.  
21 Q. So there was --  
22 A. Except elsewhere where I name  
23 the defendants in the case as the members of  
24 the venture.

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1 So it's -- they're here, by the  
2 same name that they're in the case.  
3 Q. Do you believe that these are  
4 the only defendants in the case?  
5 A. No. They're also in 489.  
6 Q. Okay. So when you say, in  
7 Opinion 4.88, "These are the members of the  
8 venture," you don't actually mean that?  
9 A. No, I mean it. You've got  
10 names across the top, and then you've got in  
11 red. And what I said explicitly elsewhere  
12 is -- and we've read that already -- that the  
13 defendants in the case -- we read that  
14 several times during this deposition -- are  
15 members of the venture.  
16 Q. Well, I understand that you say  
17 different things in different places about  
18 who makes up the venture, Dr. Egilman, which  
19 is why I'm asking you these questions,  
20 because it's unclear to me from your report  
21 who makes up the venture.  
22 A. Okay. Do you want to ask that  
23 question?  
24 Q. From looking at Document 7.488,

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1 when you say, "These are the members of the  
2 venture," you're now telling me that this is  
3 not -- that that opinion is incomplete?  
4 A. Well, I said you had to  
5 conclude -- you had to include 4.89, for one  
6 thing.  
7 Q. All right.  
8 A. And I've already said elsewhere  
9 that the members of the venture were the  
10 manufacturers and distributors in the case.  
11 Q. But you don't say that in  
12 Opinion 7.488; right?  
13 A. I don't say that in  
14 Opinion 4.88 explicitly, that's right.  
15 Q. But you don't say it  
16 explicitly, nor do you say it implicitly,  
17 sir; right? You say "These are the members  
18 of the venture," not "These are some of the  
19 members of the venture"; right?  
20 A. That's correct.  
21 Q. Okay.  
22 A. That one should have been  
23 clear.  
24 This had a different purpose



<p style="text-align: right;">Page 310</p> <p>1 originally, this document.                  2 Q. All right. Dr. Egilman, I'm                  3 trying to get you Exhibit 489. We seem not                  4 to have it in our little box here.                  5 A. Do you want me to see if I have                  6 it in my box?                  7 Q. Oh, it is in the binder that is                  8 Exhibit 1. And there may be other copies                  9 your counsel have. But I won't be able to                  10 provide Ms. Conroy a copy from me.                  11 MS. SAULINO: Okay. Let's go                  12 off the record for about a minute.                  13 THE VIDEOGRAPHER: Off the                  14 record. 4:46.                  15 (Recess taken, 4:45 p.m. to                  16 4:47 p.m.)                  17 THE VIDEOGRAPHER: Back on the                  18 record at 4:48.                  19 Q. (BY MS. SAULINO) Okay.                  20 Dr. Egilman, I'm going to give you an exhibit                  21 sticker, or I can put it on if you'd like.                  22 So we're marking as Exhibit 15,                  23 Exhibit 4.89 to your report?                  24 (Whereupon, Deposition Exhibit</p>	<p style="text-align: right;">Page 312</p> <p>1 Q. So -- and you'd agree with me                  2 that there are no documents cited here;                  3 right?                  4 A. That's correct. They were                  5 provided separately as attached to                  6 Exhibit 15.                  7 Q. But that's not indicated                  8 anywhere here on --                  9 A. They were provided with the                  10 opinion, digitally.                  11 MS. CONROY: They're attached                  12 electronically to the document.                  13 Q. (BY MS. SAULINO) So it's your                  14 testimony that there were supposed to be                  15 documents that went along with opinion 4.89,                  16 Exhibit B.489?                  17 A. Yeah. All of these.                  18 Q. But that they're not cited on                  19 the page that is the basis for your opinion?                  20 A. Well, that's the index,                  21 basically, to these documents.                  22 Q. I see what you're saying, sir,                  23 but I'm trying to figure out what you relied                  24 on here. Because we didn't have those</p>
<p style="text-align: right;">Page 311</p> <p>1 Egilman 15, Opinion B.489 Redweld                  2 folder, was marked for                  3 identification.)                  4 Q. (BY MS. SAULINO) Which is --                  5 A. 4.89 is actually this and that.                  6 Q. I'm sorry, when you say "this                  7 and that," I have one page that is 4.89.                  8 That was what was produced to us. You have                  9 something else?                  10 A. Yeah. I think you were                  11 supplied all these underlying documents.                  12 MS. CONROY: I don't think the                  13 notebooks have all of the underlying                  14 documents.                  15 THE WITNESS: You don't have                  16 the underlying documents. You weren't                  17 given all of this.                  18 Q. (BY MS. SAULINO) Dr. Egilman,                  19 I'm just looking at the one page that we've                  20 marked as Exhibit 15. I want to work through                  21 this, so let me figure this out.                  22 So Exhibit 15 in front of you                  23 is one page; right?                  24 A. Yeah, that's correct.</p>	<p style="text-align: right;">Page 313</p> <p>1 documents as being associated with your                  2 opinion.                  3 MS. CONROY: Objection.                  4 THE WITNESS: Well, I don't                  5 know that that's the case or not.                  6 Q. (BY MS. SAULINO) Okay.                  7 A. I'm telling you that the way                  8 the report was delivered by me, it included                  9 the documents in my hands.                  10 Q. All right. Can I see those                  11 documents?                  12 A. Sure.                  13 Q. Can I have the little Redweld                  14 so I don't --                  15 A. Sure.                  16 Q. All right. So let's make                  17 Exhibit 15 to your deposition what you are                  18 calling Exhibit 4.89, which is the one                  19 page -- I think it's in that blue folder.                  20 A. Right.                  21 Q. Okay. Which is the one page                  22 that you're calling an index, plus the                  23 Redweld that you're saying is the backup?                  24 We'll make that all Exhibit 15</p>

<p style="text-align: right;">Page 314</p> <p>1 to your deposition.</p> <p>2 A. Sure.</p> <p>3 Q. Okay.</p> <p>4 A. Do you want to put the sticker</p> <p>5 on the folder?</p> <p>6 Q. Yeah. That's what I'm going to</p> <p>7 do.</p> <p>8 Okay. And your Opinion 4.89 is</p> <p>9 "Members of the venture entered agreements</p> <p>10 with the DEA and DOJ for violating the law";</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 Q. And you say that -- you say now</p> <p>14 that this opinion was supposed to be read in</p> <p>15 combination with Opinion 4.88 as comprising</p> <p>16 all of the members of the venture?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. But, again, the Redweld</p> <p>19 that you just handed me still doesn't tell us</p> <p>20 that, does it?</p> <p>21 MS. CONROY: Objection.</p> <p>22 THE WITNESS: This says</p> <p>23 "Members of the venture entered</p> <p>24 agreements with the DEA and DOJ for</p>	<p style="text-align: right;">Page 316</p> <p>1 don't cite any kind of evidence; right?</p> <p>2 A. For the definition. Correct.</p> <p>3 Q. Okay.</p> <p>4 And so there's no way for us to</p> <p>5 reconstruct from your written opinion or the</p> <p>6 exhibits to your written opinion how you came</p> <p>7 to determine who the members of the venture</p> <p>8 were; right?</p> <p>9 A. No.</p> <p>10 Q. There is a way for us to</p> <p>11 reconstruct that?</p> <p>12 A. Yes.</p> <p>13 Q. From your written materials?</p> <p>14 A. Yes.</p> <p>15 Q. And what is that method?</p> <p>16 A. Well, first I named them</p> <p>17 "Members of the venture." And then if you</p> <p>18 want to know how they got to be members of</p> <p>19 the venture, you look at the definition.</p> <p>20 They relied on each other's lies about</p> <p>21 addiction and treating mild pain to push the</p> <p>22 drugs. They worked together to influence</p> <p>23 public perceptions of the class of narcotic</p> <p>24 drugs with respect to drug toxicity, quote</p>
<p style="text-align: right;">Page 315</p> <p>1 violating the law," so I think it does</p> <p>2 say that.</p> <p>3 Q. (BY MS. SAULINO) Well, I agree</p> <p>4 that you read what the opinion says, but it</p> <p>5 doesn't say that it should be read together</p> <p>6 with 4.88 to comprise the members of the</p> <p>7 venture; right?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay.</p> <p>10 Now, do you still have B.473</p> <p>11 that I asked you to hang on to?</p> <p>12 I believe it's Exhibit 12.</p> <p>13 A. Yes, I do.</p> <p>14 Q. Okay.</p> <p>15 Exhibit 12 to your deposition?</p> <p>16 A. Yes.</p> <p>17 Q. So I'm still trying to figure</p> <p>18 out what the basis is for your determining</p> <p>19 who made up the venture other than the words</p> <p>20 that you use here on Exhibit 12.</p> <p>21 You don't cite any documents in</p> <p>22 Exhibit 12, as we've already agreed; right?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. We've already agreed you</p>	<p style="text-align: right;">Page 317</p> <p>1 untreated pain, closed quote, and they</p> <p>2 encouraged the use of narcotics instead of</p> <p>3 non-medication treatments or less addictive</p> <p>4 drugs.</p> <p>5 So that -- that's the main</p> <p>6 activities.</p> <p>7 Now, you know, elsewhere, I --</p> <p>8 Q. So I think --</p> <p>9 A. I think elsewhere --</p> <p>10 Q. I think we're good there, sir.</p> <p>11 So you started with saying,</p> <p>12 "First, I named the members of the venture."</p> <p>13 And as we've just seen, you named them</p> <p>14 differently in different places; right?</p> <p>15 A. I'm just saying my answer is</p> <p>16 incomplete. Now go ahead.</p> <p>17 Q. You named them differently in</p> <p>18 different places; right?</p> <p>19 A. That's correct.</p> <p>20 Q. And here, the basis that you</p> <p>21 just read to us doesn't have any citation of</p> <p>22 any kind of support; right?</p> <p>23 A. The basis for the definition</p> <p>24 doesn't have any cites.</p>

<p style="text-align: right;">Page 318</p> <p>1 Q. So there are no --</p> <p>2 A. But the -- but there are lots</p> <p>3 of citations, examples, et cetera, for how</p> <p>4 various members of the venture met the</p> <p>5 definition I laid out here.</p> <p>6 Q. Well, I realize that you are</p> <p>7 testifying to that, sir, but there's no way</p> <p>8 for us to see how you came to that conclusion</p> <p>9 by looking at the definition of the venture</p> <p>10 presented in B.473; right?</p> <p>11 A. Wrong.</p> <p>12 Q. And why do you say that's</p> <p>13 wrong?</p> <p>14 A. Well, because we could start</p> <p>15 with B7. If you look at B7 --</p> <p>16 Q. Sir, my question was about</p> <p>17 B.473.</p> <p>18 A. You asked, "Why do you say</p> <p>19 that's wrong?" Okay? That's a wide</p> <p>20 question. That is not a yes-or-no question,</p> <p>21 as far as I can determine it.</p> <p>22 Q. Respectfully --</p> <p>23 A. I cannot answer that question</p> <p>24 "yes" or "no."</p>	<p style="text-align: right;">Page 320</p> <p>1 in B.473 by looking at the definition of the</p> <p>2 venture presented in B.473; right?</p> <p>3 MS. CONROY: Objection.</p> <p>4 THE WITNESS: There's no</p> <p>5 conclusions in B.473, so I don't</p> <p>6 understand the question.</p> <p>7 Q. (BY MS. SAULINO) Okay. And</p> <p>8 what you said just prior to that is "There</p> <p>9 are lots of citations, examples, et cetera</p> <p>10 for how various members of the venture met</p> <p>11 the definition I laid out here."</p> <p>12 But we don't see those</p> <p>13 citations, examples, et cetera, listed in</p> <p>14 your definitions for venture where they</p> <p>15 appear in your report; right?</p> <p>16 A. You don't see those examples in</p> <p>17 4.73? Correct.</p> <p>18 Q. Or 4.88?</p> <p>19 A. Or --</p> <p>20 Well, no, 4.88's got examples.</p> <p>21 Okay?</p> <p>22 4.88's got examples. It has a</p> <p>23 Redweld folder full of legal violations where</p> <p>24 the members of the venture paid fines for</p>
<p style="text-align: right;">Page 319</p> <p>1 Q. Respectfully, sir --</p> <p>2 A. If I cannot answer the</p> <p>3 question, then no problem. So I have no</p> <p>4 answer that's not -- because it's not a</p> <p>5 yes-or-no question. I can't answer the</p> <p>6 question. Go ahead.</p> <p>7 Q. Respectfully, sir, my question</p> <p>8 was: "There's no way for us to see how you</p> <p>9 came to that conclusion by looking at the</p> <p>10 definition of venture presented in B.473;</p> <p>11 right?"</p> <p>12 And your answer to that was</p> <p>13 "Wrong."</p> <p>14 We were looking at B.473 --</p> <p>15 A. Well, now you have like four</p> <p>16 questions above.</p> <p>17 Q. Looking at --</p> <p>18 A. Go ahead.</p> <p>19 Q. Looking at --</p> <p>20 A. Start again.</p> <p>21 Q. Looking at B.473 --</p> <p>22 A. Right.</p> <p>23 Q. -- there's no way for us to</p> <p>24 know how you came to the conclusions listed</p>	<p style="text-align: right;">Page 321</p> <p>1 violating the law.</p> <p>2 Q. Respectfully, sir, that was</p> <p>3 4.89, but --</p> <p>4 A. Oh, I'm sorry.</p> <p>5 Q. -- I take your point.</p> <p>6 A. 4.89. Sorry.</p> <p>7 Q. Sitting here today, can you</p> <p>8 name each member of the venture?</p> <p>9 A. Not without looking at the</p> <p>10 notes, without making a mistake, no.</p> <p>11 Maybe I can. Let me see. I</p> <p>12 had two card stocks.</p> <p>13 Q. What are you looking at right</p> <p>14 now?</p> <p>15 A. Looking at the members of the</p> <p>16 venture.</p> <p>17 Q. I'm just asking you whether,</p> <p>18 without looking at your notes and other lists</p> <p>19 that you have there, whether you can name the</p> <p>20 members of the venture. It's a yes-or-no</p> <p>21 question.</p> <p>22 A. Do you mean as a closed -- as a</p> <p>23 closed-book test?</p> <p>24 Maybe I can, maybe I can't. I</p>

<p style="text-align: right;">Page 322</p> <p>1 don't know. But I'm not going to guess.  2 Q. All right. So looking back at  3 B.473, which is Exhibit 12, number 1, you  4 say, "They relied on each other's lies about  5 addiction and treating mild pain to push the  6 drugs."  7 A. Correct.  8 Q. That's a conclusion; right?  9 A. No, that's not a conclusion.  10 That's how you qualify for the membership.  11 Q. And you don't provide any way  12 for us to know how you came to that  13 conclusion that that is how you qualify for  14 membership; right?  15 A. I do not explain why that is  16 part of the definition for venture, that's  17 correct. But I do provide examples or  18 evidence that the venture lied about  19 addiction and treating mild pain to push the  20 drugs. That's what the whole report is  21 about, more or less.  22 Q. You don't lay out here any way  23 for the defendants to pick up your report,  24 take your definition, reconstruct the work</p>	<p style="text-align: right;">Page 324</p> <p>1 in what search terms you come up with and  2 what you pursue.  3 So you know, there's -- there's  4 no way to have a -- you can reproduce the  5 method. You can reproduce the search terms,  6 and you can then look at the documents and  7 then do other iterative searches.  8 Q. By my count, more than a third  9 of your 489 or 490 opinions pertain to the  10 venture. Do you have any reason to disagree  11 with that?  12 A. No reason to agree or disagree.  13 Q. Is it your view that each and  14 every one of the opinions that is cited for  15 the venture applies to each and every  16 defendant in the opiate MDL?  17 A. I'm not sure.  18 In the aggregate, yes. I don't  19 know about each --  20 Well, here's a situation.  21 Depends how you define "applied to."  22 I can give you a definition  23 where I think the answer would be yes, and if  24 that's the definition you accept, the answer</p>
<p style="text-align: right;">Page 323</p> <p>1 that got you to your conclusion; right?  2 A. Wrong.  3 Q. You don't explicitly in writing  4 provide any way to do that, do you?  5 A. No, that's not exactly true  6 either. I gave you the methodology. If you  7 look at the grounded method, there's the  8 methodology there, there's the beginning of  9 search terms. You could then do the same  10 iterative process I did.  11 Q. Absolutely, sir. You and I  12 have talked at length today about the  13 processes that you used and how you didn't  14 document many steps of those processes;  15 right?  16 A. Right.  17 Q. Okay.  18 So there's no way for us to  19 pick up your report and recreate what brought  20 you to this conclusion.  21 A. Well, it's an iterative  22 process. It's never going to be the same.  23 We do it two or three times,  24 and there will be certainly minor differences</p>	<p style="text-align: right;">Page 325</p> <p>1 is yes.  2 Q. Why don't we start with my  3 first question. Is it your view that each  4 and every one of the opinions that is cited  5 for the venture applies to each and every  6 defendant in the opiate MDL?  7 A. Based on my understanding of  8 membership in the venture, participation in  9 the venture, yes.  10 Q. So if we look at any one  11 opinion about the venture, we should be able  12 to find support for every defendant in the  13 opiate MDL for that opinion?  14 A. Oh, no. Not necessarily.  15 That's not how it works.  16 Q. Well, so how is there any way  17 for us to understand how you applied that  18 opinion to every member of the venture?  19 A. Works like a bank robbery. One  20 person -- or a series -- a bank robbery  21 network.  22 So you have lots of different  23 people. You have the guy outside watching.  24 You've got the guy inside with the gun.</p>

<p style="text-align: right;">Page 326</p> <p>1 You've got the teller who may be complicit.          2 You've got the guys in the car, the getaway          3 car, and you've got some people looking out          4 for the cops. Okay?          5 So they're all 100 percent          6 responsible for robbing that bank. And in          7 this case, that means destroying these          8 communities, costing them misery and some          9 money.          10 And then it goes forward and          11 back. So in other words, that bank -- that          12 group of bank robbers, okay? One of those          13 guys was robbing banks since 1984, okay?          14 But the other bank robbers          15 joined 1996, 1997. Once they agree to the          16 same purpose of continuing to rob banks,          17 they're also responsible for the bank          18 robberies that go back to 1994. And the same          19 thing going forward.          20 So by that definition of          21 concerted action, they're all participants.          22 They all don't have to hold a gun to the          23 teller's head. They didn't all have to be          24 the guard. They're all 100 percent</p>	<p style="text-align: right;">Page 328</p> <p>1 MS. CONROY: Objection.          2 THE WITNESS: But we'll see.          3 Okay. You're correct.          4 Q. (BY MS. SAULINO) What made you          5 think that this exhibit should be more than          6 one page, Dr. Egilman?          7 A. First, it's two pages.          8 Q. I was only given one page,          9 Dr. Egilman, so could I see what you have?          10 A. Sure.          11 Q. I'm looking at what was          12 produced to us two days ago.          13 A. Well, I'm looking at my opinion          14 that should have been produced to you.          15 Q. Right. Okay. What you have          16 here, Dr. Egilman, the second page that you          17 have here is what was originally produced to          18 us which was cut off. And so the first page          19 is what was reproduced to us. Both were          20 represented to be the same document.          21 Is that your understanding?          22 A. I don't have any understanding          23 about that.          24 Q. Okay. Well, looking at</p>
<p style="text-align: right;">Page 327</p> <p>1 responsible.          2 Q. The definition of concerted          3 action that you just laid out in your          4 testimony is not stated anywhere in your          5 report, is it?          6 A. Correct.          7 Q. And you haven't provided          8 anywhere in your report your basis for          9 believing that that definition applies to the          10 defendants in the opiate MDL; right?          11 A. That's correct.          12 Q. I'd like to look at some of          13 your venture opinions.          14 Let's look at Opinion 81 which          15 is on page 75 of your report.          16 A. Why don't you wait a second          17 while he yanks the whole opinion.          18 Q. Well, I can give you a copy of          19 the whole exhibit.          20 A. Yeah. But the exhibit books          21 have got --          22 Q. This is the exhibit. It's one          23 page. Would you like it?          24 A. I don't think so.</p>	<p style="text-align: right;">Page 329</p> <p>1 Exhibit B.81, is that the basis for your          2 opinion, "The venture should have known that          3 higher doses kill and warned about this"?          4 A. Correct.          5 Q. Okay. And let's mark that as          6 Exhibit 16 to your deposition.          7 (Whereupon, Deposition Exhibit          8 Egilman 16, The "venture" should have          9 known that higher doses kill and          10 warned about this, was marked for          11 identification.)          12 Q. (BY MS. SAULINO) You can mark          13 both pages. And so as I just explained, the          14 first page was what was reproduced to us.          15 The second page is what we originally got,          16 which was cut off.          17 It's my understanding those          18 were supposed to be the same.          19 A. Yes. Okay. I'm not fighting.          20 Q. Okay. So what we have here as          21 the basis for Opinion 81, first, let's look          22 at what Opinion 81 is, and that is "The          23 venture should have known that higher doses          24 kill and warned about this"; right?</p>



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1 A. Right.  
2 Q. And here you have a screenshot  
3 of the first page of an article; right?  
4 A. Correct.  
5 Q. And that's all you provide as  
6 the basis for this opinion. Right?  
7 A. Correct.  
8 Q. Okay. You don't actually  
9 attach the full article; right?  
10 A. That's apparently correct.  
11 Q. Okay. And your opinion here,  
12 the way that you have phrased it said "The  
13 venture should have known that higher doses  
14 kill and warned about this"; right?  
15 A. Correct.  
16 Q. You don't give a date at which  
17 they should have known; right?  
18 A. No. This is known for a long  
19 period of time.  
20 Q. Okay.  
21 A. This is -- I mean, this is  
22 known since, you know, probably 3500 in the  
23 Greek scrolls, in the Greek, you know,  
24 writing.

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1 Q. You would agree with me,  
2 Dr. Egilman, that the bottom of the first  
3 page of this article is cut off; right?  
4 A. Correct.  
5 Q. Okay. Would you have any  
6 reason to doubt me if I told you that this  
7 article that you screenshotted here was  
8 published in 2016?  
9 A. No.  
10 Q. And that is the only basis that  
11 you provide for Opinion 81?  
12 A. That's the only basis listed in  
13 this opinion.  
14 Q. And you don't --  
15 A. This is -- I mean, this is just  
16 documenting in numbers what's been known  
17 forever.  
18 Q. Well, you don't provide any  
19 detail about what you believe has been known  
20 forever here in Opinion 81; right?  
21 A. That's correct.  
22 Q. You don't provide any roadmap  
23 to where we should look to find what you  
24 believe has been known forever; right?

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1 A. That's correct.  
2 Q. You don't provide any original  
3 hypothesis that you used in order to come to  
4 this opinion; right?  
5 A. Correct.  
6 Q. You don't provide us any  
7 roadmap of how you tested that hypothesis;  
8 right?  
9 A. Correct.  
10 Q. You don't cite to any  
11 deposition testimony that discusses this  
12 opinion; right?  
13 A. That's correct.  
14 Q. So other than this screenshot  
15 of the first page of an article from 2016, we  
16 have nothing written in your report that  
17 shows us how you came to the opinion in  
18 Opinion 81?  
19 A. That's correct.  
20 Q. All right.  
21 All right. So let's look at  
22 Opinion No. 8, which is at page 63 of your  
23 report.  
24 Do you have your report?

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1 A. I have the index to the report.  
2 Q. I'm sorry?  
3 A. I have the index to the report.  
4 Q. What do you mean, sir?  
5 A. Well, you keep referring to  
6 this as "the report." I think this is -- the  
7 report is 35, 400 pages, I think. So as  
8 we've been going through things, you can see  
9 this is not the entire report.  
10 Q. So what you are looking at in  
11 front of you -- I just want to make sure on  
12 the record we have -- so what's it been  
13 marked as for your deposition?  
14 A. It's been marked as "Report of  
15 David S. Egilman, M.D. MPH."  
16 Q. For your deposition, sir.  
17 Exhibit 1F?  
18 A. Exhibit 1F.  
19 Q. So Exhibit 1F, which you were  
20 handed this morning --  
21 A. Right.  
22 Q. -- which is named on the title  
23 page "Report of David S. Egilman, M.D. MPH."  
24 A. Right.

<p style="text-align: right;">Page 334</p> <p>1 Q. You're telling me that that's  2 not a report. That's just an index?  3 A. This is the -- this is the  4 beginning of a report that's 3,200,  5 3,300 pages; correct. With all the  6 associated documents which have even more  7 pages.  8 That's the whole report. Do  9 you see that? All these boxes? That's the  10 report. That's what was shipped to you.  11 Q. Actually, sir, nothing was  12 shipped to us.  13 A. That was what was digitally  14 transmitted to you.  15 Q. I understand what you're trying  16 to say here. Is there any way that we would  17 know from looking at this document that is  18 titled "Report of David S. Egilman," that  19 this is not actually your report?  20 MS. CONROY: Objection.  21 THE WITNESS: It's part of the  22 report. Do you want the whole report?  23 Well, one way would be to say  24 oh, there's all these exhibits listed.</p>	<p style="text-align: right;">Page 336</p> <p>1 that. And that's number one reason.  2 Number 2A is, I think that's  3 how it was transmitted digitally,  4 although I didn't do the transmission.  5 Q. (BY MS. SAULINO) Okay. So I  6 just want to clarify, Dr. Egilman. You've  7 referred to this document that we have marked  8 as Exhibit 1F to your deposition as the index  9 to your report.  10 And I'm trying --  11 A. It's the introduction and index  12 to the opinions.  13 Q. And so then we need to add  14 everything in B1 through 4.89, Exhibits B1  15 through 4.89.  16 A. And the attached documents  17 which were also submitted, that in many cases  18 are supplemental to the few pages that are in  19 the "opinion" opinion.  20 Q. Okay.  21 A. Like we went through on that  22 Exhibit 15 that's marked here.  23 Q. I'm following you.  24 And so if we look at what</p>
<p style="text-align: right;">Page 335</p> <p>1 Okay? In there.  2 And so those are obviously --  3 I'm sorry.  4 MS. SAULINO: We need to take a  5 time out.  6 THE VIDEOGRAPHER: Off the  7 record. 5:12.  8 (Recess taken, 5:11 p.m. to  9 5:17 p.m.)  10 THE VIDEOGRAPHER: We're back  11 on the record at 5:18.  12 THE WITNESS: Do you want me to  13 keep going with the answer?  14 MS. SAULINO: Do you remember  15 where you were?  16 THE WITNESS: I think so.  17 MS. SAULINO: Okay. Well --  18 THE WITNESS: The question was  19 how would someone know that this was  20 not the entire report?  21 The answer that I gave already  22 was well, there's exhibit numbers  23 attached under -- cited in each of the  24 opinions. So you'd know there'd be</p>	<p style="text-align: right;">Page 337</p> <p>1 you're now calling the index to your  2 opinions, we see the name of the opinion, and  3 then we go to the exhibit that matches that  4 number, and we see the support for the  5 opinion; right?  6 A. Well, first, I don't agree with  7 the predicate.  8 Q. I'm sorry, which predicate?  9 A. What you're now calling the  10 index to your opinions.  11 Q. Dr. Egilman, that was something  12 you said just before the break.  13 A. And I just corrected it and  14 said it's the introductory materials and the  15 index.  16 And so -- next question.  17 Q. Your report is the opinions  18 that you list in Deposition Exhibit 1F plus  19 all of the exhibits in Exhibit B1 through  20 4.89 and their attached documents. That's  21 your report?  22 A. No.  23 Q. What else is a part of your  24 report?</p>

<p style="text-align: right;">Page 338</p> <p>1 A. The methodology sections and  2 the other sections in Exhibit 1F.  3 Q. Right. Those are already in  4 1F; right?  5 A. Yeah, but you didn't say it  6 that way. When you gave your question, you  7 limited it to things called opinions. And I  8 wanted to make sure that the record was clear  9 that it was everything in 1F.  10 Q. I appreciate that, Dr. Egilman.  11 Is there anything else that you  12 consider to be part of your report that is  13 not Exhibit 1F or all of the exhibits  14 attached to Exhibit B and their attached  15 documents?  16 A. No.  17 Q. Okay. Let's look at page 63,  18 Opinion 7.8.  19 A. Okay.  20 Q. Opinion 7.8 is "All for one and  21 one for all. The venture knew collective  22 marketing increased the size of the opioid  23 pie. Similarly, had any venture member  24 broken ranks, the opioid market would have</p>	<p style="text-align: right;">Page 340</p> <p>1 marking this as Exhibit 17 to your --  2 MS. SAULINO: There's a  3 different version?  4 MS. CONROY: There's an arrow  5 on this one.  6 (Whereupon, Deposition Exhibit  7 Egilman 17, All for one and one for  8 all - the "venture" knew collective  9 marketing increased the size of the  10 opioid pie. Similarly had any  11 "venture" member broken ranks, the  12 opioid market would have slowed or if  13 the complete truth was told (no  14 efficacy and high addiction risk) the  15 market would have crashed, was marked  16 for identification.)  17 Q. (BY MS. SAULINO) Okay. So  18 I've marked as Exhibit 17 to your deposition,  19 our copy of Exhibit B8. Your copy that  20 Ms. Conroy just handed you has an arrow  21 pointing at the far left -- the far right,  22 sorry. I had to reverse myself --  23 description under the far right green box; is  24 that right?</p>
<p style="text-align: right;">Page 339</p> <p>1 slowed or if the complete truth was told, no  2 efficacy and high addiction risk, the market  3 would have crashed."  4 Right?  5 A. Yes.  6 Q. You wrote that opinion?  7 A. I did.  8 Q. Before we even get to  9 Exhibit B8, you hold the opinion that opioids  10 have no efficacy?  11 A. No efficacy for chronic  12 non-malignant pain.  13 Q. I see. You don't say that  14 here, though; right?  15 A. I left that part out.  16 Q. All right. Now let's look at  17 Exhibit B8. I have a copy here if you need  18 it.  19 Do you want --  20 Okay. I didn't know if you  21 wanted to use your own copy.  22 THE WITNESS: Jayne, do you  23 want to see if I've got marks on mine.  24 Q. (BY MS. SAULINO) So I'm</p>	<p style="text-align: right;">Page 341</p> <p>1 A. Right.  2 Q. And otherwise, they're the  3 same?  4 A. Right. But the whole document,  5 I think, is provided. So here's the whole  6 opinion, I think. Maybe not. The whole  7 opinion is the whole document. Apparently,  8 that wasn't sent, but this is enough.  9 Q. So Dr. Egilman, your basis for  10 this opinion is again one document; right?  11 A. Correct.  12 Q. You don't identify any  13 deposition testimony; right?  14 A. Correct.  15 Q. You don't identify any other  16 documents that led to this opinion; right?  17 A. Correct.  18 The basis for my opinion as  19 stated in this opinion is one document.  20 There is other bases elsewhere in the report.  21 But go ahead.  22 Q. Okay. But you don't state any  23 of those other bases here under your opinion;  24 right?</p>

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1 A. Correct.

2 Q. You don't provide us any kind

3 of cross-reference that would allow us to

4 know where else in your report you provide

5 bases for this opinion; right?

6 MS. CONROY: Objection.

7 THE WITNESS: Correct.

8 Q. (BY MS. SAULINO) Now, breaking

9 this opinion down, because it seems to have

10 several parts. Would you agree with me on

11 that?

12 A. Sure.

13 Q. Okay. You first say, "The

14 venture knew collective marketing increased

15 the size of the opioid pie"; right?

16 A. Correct.

17 Q. And we've just established you

18 cite one document for that; right?

19 A. In this opinion, correct.

20 Q. Okay. And this document

21 doesn't actually name any members of the

22 venture; right?

23 A. Well, it's a Janssen document.

24 Q. Well, it's simply --

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1 A. And the name's OxyContin, which

2 is a Purdue product.

3 Q. Well, sir, when you say it's a

4 Janssen document, all you know is that it was

5 produced by Janssen; right?

6 A. No, I think it's a Janssen

7 document. If you look at the document, it's

8 a Janssen document.

9 Q. Okay. I'm looking at your

10 Exhibit 8.

11 A. Yeah. I say if you look at

12 the -- if you look at the Bates numbered

13 actual document, it's a Janssen document.

14 That's my recollection.

15 Q. A document that was produced by

16 Janssen?

17 A. Written -- yeah. It's not an

18 FDA document produced by Janssen. It's a

19 Janssen document produced by Janssen.

20 Q. Do you have any basis for that

21 knowledge?

22 A. I think it says it on the

23 document.

24 Q. Did you see any deposition

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1 testimony to that effect?

2 A. No.

3 Q. Did you do any research to that

4 effect?

5 A. No.

6 Q. And you say similar -- your

7 next piece of your opinion is "Similarly, had

8 any venture members broken ranks, the"

9 opinion marked -- I'm sorry -- "Had any

10 venture member broken ranks, the opioid

11 market would have slowed or if the complete

12 truth was told, no efficacy and high

13 addiction risk, the market would have

14 crashed." Right?

15 A. Right.

16 Q. And you base that again on this

17 one screenshoted document that you have here

18 on B8?

19 A. No. There's other documents

20 that --

21 MS. CONROY: Objection.

22 THE WITNESS: There's other

23 documents that support that as well

24 elsewhere in the report. But the --

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1 So there's other documents.

2 There's other bases for that opinion.

3 Q. (BY MS. SAULINO) Nothing

4 listed here; right?

5 A. Correct.

6 Not in this opinion.

7 Q. And there's nothing on this

8 document that talks about breaking ranks, is

9 there?

10 A. That's correct.

11 Q. Okay. And you don't cite to

12 any deposition testimony that leads to that

13 conclusion; right?

14 A. Correct.

15 Q. Okay. Let's look at

16 Opinion 62, which is on page 71.

17 A. Okay.

18 Q. In Opinion 62 you say,

19 "Opinion. When the FDA tried to limit use in

20 2001 by changing the label from more than a

21 few days to extended period of time, the

22 venture used this language to increase the

23 market"; right?

24 A. Correct.

<p style="text-align: right;">Page 346</p> <p>1 Q. Okay.</p> <p>2 And if you then look at</p> <p>3 Exhibit B62 -- I can hand it to you.</p> <p>4 Oh. What do you have there?</p> <p>5 A. B62.</p> <p>6 Q. All right. Well, let me make</p> <p>7 sure that your B62 and mine are the same.</p> <p>8 You have a Redweld as well?</p> <p>9 MS. CONROY: Of the Bates</p> <p>10 documents.</p> <p>11 THE WITNESS: This is the</p> <p>12 online Bates document.</p> <p>13 Q. (BY MS. SAULINO) Okay. Let</p> <p>14 me -- I will hand you the exhibit,</p> <p>15 Dr. Egilman. I'm just trying to make sure I</p> <p>16 understand what you have here.</p> <p>17 A. I think I've got a mark on</p> <p>18 mine, so.</p> <p>19 Q. I'm sorry?</p> <p>20 A. I've got -- this is the one I</p> <p>21 read and marked.</p> <p>22 Q. Okay.</p> <p>23 Would you like a sticker?</p> <p>24 A. Sure.</p>	<p style="text-align: right;">Page 348</p> <p>1 but it's from cbsnews.com; right?</p> <p>2 A. Correct. It's a transcript of</p> <p>3 the "60 Minutes" TV show.</p> <p>4 Q. Well, it's a portion of a</p> <p>5 transcript; right?</p> <p>6 A. Correct.</p> <p>7 Q. There's no Bates number listed</p> <p>8 there; right?</p> <p>9 A. Correct.</p> <p>10 Q. Okay.</p> <p>11 And then, you then attach a --</p> <p>12 one single e-mail chain; right?</p> <p>13 A. Correct.</p> <p>14 Q. That's an internal e-mail chain</p> <p>15 from Purdue; right?</p> <p>16 A. Correct.</p> <p>17 Q. Those are the two pieces of</p> <p>18 evidence that you cite for saying that the</p> <p>19 venture used this language to increase the</p> <p>20 market.</p> <p>21 A. Correct.</p> <p>22 Q. You don't cite to any other</p> <p>23 documents; right?</p> <p>24 A. Not in this opinion.</p>
<p style="text-align: right;">Page 347</p> <p>1 Q. You have it for 18?</p> <p>2 (Whereupon, Deposition Exhibit</p> <p>3 Egilman 18, Opinion - When the FDA</p> <p>4 tried to limit use in 2001 by changing</p> <p>5 the label from "more than a few days"</p> <p>6 to "extended period of time," the</p> <p>7 "venture" used this language to</p> <p>8 increase the market, was marked for</p> <p>9 identification.)</p> <p>10 Q. (BY MS. SAULINO) Can you show</p> <p>11 me what you've marked?</p> <p>12 A. Okay.</p> <p>13 Q. All right. So looking at</p> <p>14 Exhibit 62 --</p> <p>15 MS. CONROY: Exhibit 18. B62.</p> <p>16 MS. SAULINO: Sorry,</p> <p>17 Exhibit 18. B62.</p> <p>18 Q. (BY MS. SAULINO) On the first</p> <p>19 page of Exhibit 18, you quote from a CBS News</p> <p>20 article; right?</p> <p>21 It's the "60 Minutes."</p> <p>22 A. Correct, the "60 Minutes"</p> <p>23 piece.</p> <p>24 Q. Right, a "60 Minutes" piece,</p>	<p style="text-align: right;">Page 349</p> <p>1 Q. And you don't cite to any</p> <p>2 deposition testimony; right?</p> <p>3 A. Correct.</p> <p>4 Q. And you don't provide us the</p> <p>5 question that you were seeking to answer;</p> <p>6 right?</p> <p>7 A. Well, that's again the</p> <p>8 assignment.</p> <p>9 Q. You don't provide us the</p> <p>10 question that resulted in this opinion;</p> <p>11 right?</p> <p>12 A. Not the specific question that</p> <p>13 resulted in this opinion. I gave you the</p> <p>14 methodology that resulted in this opinion.</p> <p>15 Q. Well, sir, you actually haven't</p> <p>16 given us the methodology that resulted in</p> <p>17 this opinion. That's not written here, is</p> <p>18 it?</p> <p>19 A. It's not on the opinion.</p> <p>20 Q. And you agreed with me earlier</p> <p>21 that you used different types of methodology</p> <p>22 for different opinions; right?</p> <p>23 A. No. It's the same methodology.</p> <p>24 It's the same search techniques and review of</p>



<p style="text-align: right;">Page 350</p> <p>1 documents for all of the non, say, medical  2 opinions. The medical opinions are based on  3 evidence-based medicine to the extent  4 possible. That's mostly the efficacy, other  5 things like that.</p> <p>6 And the non-medical opinions --  7 non-medical drug efficacy opinions are based  8 on grounded method theory.</p> <p>9 Q. Well, okay. So that's a bit  10 different than what you told me earlier.</p> <p>11 So where in your report have  12 you indicated which are the medical opinions  13 based on evidence-based medicine and which  14 are the other opinions that are based on  15 grounded method theory?</p> <p>16 MS. CONROY: Objection.</p> <p>17 THE WITNESS: First, I don't  18 think that's different from what I  19 told you before. I think I told you  20 that specifically before. And you  21 need to obviously -- when I'm talking  22 about EERW, I'm talking about medical  23 opinions. If I'm talking about the  24 Roth paper, I'm talking about medical</p>	<p style="text-align: right;">Page 352</p> <p>1 will determine whether or not you use opioids  2 for chronic non-malignant pain.</p> <p>3 Q. The explanation you just gave  4 does not appear in your report; correct?</p> <p>5 MS. CONROY: Objection.</p> <p>6 THE WITNESS: Those words do  7 not appear, but I think it's clear if  8 you read the introduction to the  9 report, that that's a distinction. It  10 doesn't need an explicit definition  11 since evidence-based medicine is  12 titled evidence-based medicine.</p> <p>13 And I gave you examples. If  14 you look at the grounded theory of  15 five or six papers that I published on  16 grounded theory, and if you look at  17 just the titles of those papers, you  18 see that they're dealing with other  19 issues, similar ones I deal with here.  20 Off-label marketing. Promotion.  21 Illegal promotion. False and  22 misleading advertising. That kind of  23 activity. That's all grounded  24 theory-based. And there's examples in</p>
<p style="text-align: right;">Page 351</p> <p>1 evidence.</p> <p>2 If I'm talking about the  3 efficacy of opioids for chronic  4 non-malignant pain, I'm talking about  5 medical opinions.</p> <p>6 Q. (BY MS. SAULINO) Let's just  7 talk --</p> <p>8 A. If I'm talking about policy  9 issues of how the companies marketed, took  10 advantage of FDA language, that's a grounded  11 theory opinion.</p> <p>12 Q. And this breakdown appears  13 nowhere in your report; correct?</p> <p>14 A. I think it's pretty clear if we  15 look at the methodology. Evidence-based  16 medicine deals with medical questions. If  17 you look at the rest of that section, it  18 deals with cause-effect relationships,  19 choice-of-treatment modalities, efficacy,  20 side effects, et cetera.</p> <p>21 I think it's clear that  22 marketing and other related, over --  23 overselling, things like that, that's not  24 based on a similar kind of evidence base that</p>	<p style="text-align: right;">Page 353</p> <p>1 the introduction that -- for both.</p> <p>2 Q. (BY MS. SAULINO) So if we  3 wanted to figure out which methodology you  4 used for which opinion, we'd have to guess  5 whether it was a medical opinion or a  6 marketing opinion.</p> <p>7 A. If you think that's a guess,  8 then I guess you could call it a guess. I  9 wouldn't call it a guess. I think it's  10 obvious.</p> <p>11 Q. Okay. Let's look at the one --  12 let's look at Exhibit 15 to your deposition,  13 the one we were just looking at, No. 8.</p> <p>14 A. Right.</p> <p>15 Q. You'd agree with me that  16 that --</p> <p>17 A. Wait a minute. 15, did you  18 say?</p> <p>19 MS. CONROY: 17.</p> <p>20 MS. SAULINO: 17. Sorry.  21 Exhibit 17. It's getting a little  22 late. I apologize.</p> <p>23 THE WITNESS: You did say 15.</p> <p>24 MS. SAULINO: I'm sure I did,</p>

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1 sir. I apologize. I misspoke.  
2 THE WITNESS: I'm on 17.  
3 Q. (BY MS. SAULINO) 17, Opinion  
4 No. 8.  
5 A. Okay, right.  
6 This is obviously a grounded  
7 theory-based issue. There's no math modeling  
8 here. There's no data that was collected by  
9 anybody that I know that shows, quote,  
10 business expansion is driven by OxyContin.  
11 Q. Dr. Egilman, I haven't asked my  
12 question yet. Could I ask my question?  
13 A. Go ahead.  
14 Q. You would agree with me that  
15 this opinion discusses efficacy and high  
16 addiction risks; right?  
17 A. Correct.  
18 Q. An opinion that you hold based  
19 on your medical experience; right?  
20 A. No. This is dealing with those  
21 that -- those efficacy and high addiction  
22 risks as it should have been told by the  
23 companies. This is a breaking ranks opinion.  
24 Q. But your belief that it should

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1 have been told that way by the companies is  
2 based on your medical opinion; correct?  
3 A. Probably true.  
4 Q. Okay.  
5 A. Okay. But -- but that --  
6 Q. So for this opinion, you would  
7 have --  
8 MS. CONROY: Let him finish his  
9 answer.  
10 MS. SAULINO: He did answer.  
11 THE WITNESS: Go ahead. My  
12 answer is incomplete. Go ahead.  
13 Q. (BY MS. SAULINO) So for this  
14 opinion, we would have to guess whether you  
15 used the grounded theory approach or the  
16 evidence-based medicine opinion; right?  
17 MS. CONROY: Objection.  
18 THE WITNESS: No. Not at all.  
19 Q. (BY MS. SAULINO) You think  
20 it's obvious?  
21 A. I think it's obvious.  
22 Q. But you don't list it anywhere  
23 here?  
24 A. Because it's obvious.

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1 Q. You don't list, for any  
2 opinion, which approach you took; correct?  
3 A. Explicitly, no. But I think  
4 it's obvious.  
5 Q. So earlier when you testified  
6 that you were actually using a combination of  
7 the two, that was inaccurate?  
8 A. No, that was for the whole  
9 report.  
10 Q. When I was asking you questions  
11 about the evidence-based medicine approach  
12 and you were bringing in part of the grounded  
13 theory approach, and I asked you why you were  
14 doing that, and you said because you used  
15 them in combination, that's not actually what  
16 happened?  
17 MS. CONROY: Objection.  
18 THE WITNESS: The only  
19 combination would be if -- what you  
20 just did with this opinion, right, the  
21 evidence-based medicine leads to  
22 the -- to the conclusion that the  
23 drugs are not efficacious and they're  
24 addictive. Right?

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1 So to the extent that you're --  
2 to the extent that you're correct,  
3 that that's an evidence-based medical  
4 derived opinion, which it probably is,  
5 okay? -- that's a component of this  
6 grounded theory opinion, but for the  
7 most part, this is basically a  
8 grounded theory opinion.  
9 Q. (BY MS. SAULINO) Okay. So  
10 your testimony earlier when you were  
11 explaining to me how you combined the two  
12 methodologies was not accurate?  
13 MS. CONROY: Objection.  
14 THE WITNESS: I don't recall it  
15 completely. I just told you an  
16 example of where it would be accurate.  
17 It doesn't -- I didn't use them  
18 in combination all the time. Okay?  
19 And I didn't even think about the  
20 example you just pointed out so  
21 deftly, and where they were used in  
22 combination.  
23 Q. (BY MS. SAULINO) Well, about  
24 five minutes ago, you told me it was obvious

<p style="text-align: right;">Page 358</p> <p>1 this was the grounded theory approach. So          2 that's not true either; right?          3 A. Sure it is. This is obviously          4 a grounded theory approach. The small          5 component of this is that there's a high          6 addiction risk. You don't need to do          7 evidence-based medicine for that. Okay?          8 That -- that's -- that's -- that was obvious,          9 I think, to the -- to the venture members for          10 a long time.          11 Q. Efficacy is also a medical          12 opinion; right?          13 A. No efficacy? Yeah, that's          14 true, and that was also known to them.          15 That's an easy one. There's no studies to          16 date that show that these drugs worked for          17 chronic, non-malignant pain.          18 Q. The fact of the matter is,          19 Dr. Egilman, there is no way for us to look          20 at your report and by reading your report          21 know which theory you used to come to which          22 opinion; right?          23 MS. CONROY: Objection.          24 THE WITNESS: Wrong.</p>	<p style="text-align: right;">Page 360</p> <p>1 to actually read the introduction and apply          2 the correct theory to what's the obvious          3 correct opinion.          4 Q. All right. Let's look at          5 Opinion 69, which is on page --          6 A. 72.          7 Q. Thank you. And you have a          8 different 69 than I do for Exhibit B69?          9 A. I do. And this is also          10 incomplete.          11 But it's one I corrected the          12 opinion on.          13 Q. Okay. Well, let's just break          14 this down.          15 So can I see what you are          16 looking at right now?          17 Okay. So what you are looking          18 at -- okay -- is Exhibit B69 with your          19 handwriting on it, which is a copy of what we          20 were given as Exhibit B69, which you have          21 changed. Correct?          22 A. Correct.          23 Q. So let's mark that.          24 A. But also the entire article was</p>
<p style="text-align: right;">Page 359</p> <p>1 Q. (BY MS. SAULINO) We'd have to          2 assume?          3 A. No.          4 MS. CONROY: Objection.          5 THE WITNESS: It's obvious. If          6 I'm giving an opinion about EERW or          7 technical epidemiologic analysis, or          8 criticizing the methodology used to          9 come up with 100 million untreated          10 pain patients, that's -- that's an          11 epidemiologic evidence-based medical          12 criticism.          13 Q. (BY MS. SAULINO) You don't say          14 that in your report, do you?          15 A. If I'm giving an opinion like          16 I -- like this one that -- that the business,          17 that is, the opioid business was driven by          18 OxyContin sales, that's based on grounded          19 theory and these documents.          20 It's not based on any          21 epidemiologic study.          22 Q. You don't say any of that in          23 your report, do you?          24 A. Not explicitly. You would have</p>	<p style="text-align: right;">Page 361</p> <p>1 given to you and is in my right hand.          2 Q. Okay.          3 Sir, I don't know what you          4 think was given to us, but the one page that          5 has just been marked as Exhibit 19 to your          6 deposition is what the defendants received as          7 Exhibit B69.          8 (Whereupon, Deposition Exhibit          9 Egilman 19, Opinion - the "venture"          10 corrupted the FDA and Salem --          11 News.com FDA Corruption Worsens as          12 Death Toll Mounts in Drug Epidemic!          13 article, was marked for          14 identification.)          15 MS. CONROY: Can I see          16 Exhibit 19?          17 Q. (BY MS. SAULINO) And you've          18 now written over that and changed the          19 opinion; is that right?          20 A. Right.          21 Q. Okay. What have you changed          22 the opinion to say?          23 A. I changed it to the FDA was --          24 in -- in -- over -- it should be overworked,</p>

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1 understaffed, underpaid, and had a revolving  
2 door.  
3 Q. Okay. And you've not disclosed  
4 that new opinion to the defendants until just  
5 this moment when I asked about it?  
6 A. Right. I changed it last  
7 night.  
8 MS. CONROY: Objection.  
9 Q. (BY MS. SAULINO) You changed  
10 it last night?  
11 A. Yes.  
12 Q. Did you change any of your  
13 other opinions yesterday?  
14 A. Did I change any of them? I  
15 don't think so. I mean, I wrote notes on a  
16 lot of them.  
17 Q. So to your recollection, this  
18 is the only opinion that you have changed?  
19 A. Correct.  
20 Q. Okay. And there's no way for  
21 us to know -- if you've changed any others,  
22 there's no way for us to know except that you  
23 don't currently recall changing any others?  
24 A. No. I've got them all in this

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1 box. You can mark the box. You've been  
2 going through the box during some of the  
3 breaks. I don't think there's any others.  
4 Q. Okay. And your original  
5 opinion here was that the venture corrupted  
6 the FDA --  
7 A. Correct.  
8 Q. -- right?  
9 And you now don't believe that  
10 that opinion holds?  
11 A. Let's say it's -- it depends  
12 how you define "revolving door" and what went  
13 on in the revolving door.  
14 Q. I --  
15 A. So --  
16 Q. How did we get to a revolving  
17 door? I was looking at your original  
18 opinion.  
19 A. Okay. But you didn't ask that.  
20 Q. Yeah, I did.  
21 A. No, you said -- you just -- you  
22 didn't --  
23 Your original opinion [sic] was  
24 that the venture corrupted the FDA?

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1 Right.  
2 And now you don't believe that  
3 opinion holds was your question.  
4 Q. Correct.  
5 A. That was not a reference to  
6 this opinion. That was a general question  
7 about what my opinion was now.  
8 Q. Okay. Well, I apologize if you  
9 found that unclear in some way.  
10 You no longer --  
11 A. I didn't find it unclear at  
12 all. I was answering it.  
13 Q. Let me change the question,  
14 Dr. Egilman.  
15 You no longer believe the  
16 venture corrupted the FDA?  
17 A. No longer willing to say that  
18 this evidence is complete support for that  
19 opinion.  
20 Q. Okay. But the evidence that is  
21 cited on B69, you believe is complete support  
22 for your new opinion that the FDA was  
23 overworked, understaffed, underpaid, and had  
24 a revolving door --

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1 A. Correct.  
2 Q. -- is that right?  
3 Okay. And your complete  
4 support for that is found in Exhibit B69?  
5 A. Correct.  
6 Q. No deposition testimony in  
7 addition to this? Right?  
8 A. No, there's other --  
9 Well, no. I have a lot of  
10 other support for this with respect to --  
11 this all refers to -- this refers to  
12 Rappaport and Curtis Wright. So there's a  
13 lot of other evidence for this. It's not in  
14 the opinion, but there's a lot of other  
15 evidence in other opinions, particularly  
16 about Rappaport.  
17 Q. When you say "This refers to  
18 Rappaport and Curtis" Knight --  
19 A. Curtis Wright, right.  
20 Q. Right. What do you mean  
21 "this"?  
22 A. This opinion. It cites them.  
23 Q. The opinion cites a single  
24 Salem News article, sir; right?

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1 A. The single Salem News article  
 2 describes what happened with the approval of  
 3 Zohydro, and it also talks about  
 4 Curtis Wright. And the revolving door with  
 5 Curtis Wright.  
 6 Q. Okay. But you don't cite to  
 7 anything else besides this single Salem News  
 8 article; right?  
 9 A. Those things are in here.  
 10 That's correct.  
 11 Q. In the news article?  
 12 A. That's correct.  
 13 Q. Written by someone at the Salem  
 14 News; right?  
 15 A. Correct.  
 16 Q. Not written by you?  
 17 A. Correct. I didn't write the  
 18 article.  
 19 What do you want me to do with  
 20 the complete article that was supposed to be  
 21 attached?  
 22 Q. Okay. When you say "the  
 23 complete article that was supposed to be  
 24 attached," what are you handing me right now?

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1 MS. CONROY: It's the link.  
 2 It's the printout of the link that is  
 3 on the exhibit.  
 4 Q. (BY MS. SAULINO) So rather  
 5 than a third-page snippet that's on  
 6 Exhibit B69, you actually meant for the whole  
 7 page in a third article to be included on  
 8 B69?  
 9 A. That's why I gave you the link.  
 10 Q. Okay. So why don't we attach  
 11 that to Exhibit 19.  
 12 A. I did.  
 13 Q. But there's nothing else that  
 14 you intended to attach to Exhibit 19; right?  
 15 A. No. There's other opinions  
 16 that relate to that opinion.  
 17 Q. And you don't cross-reference  
 18 other opinions in that opinion; right?  
 19 A. Correct.  
 20 Q. And when we say "that opinion,"  
 21 we mean Opinion 69; right? Which has now  
 22 been rewritten?  
 23 A. Correct.  
 24 Q. And you don't provide any

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1 roadmap in your report that would show us  
 2 what other opinions support Opinion 69;  
 3 right?  
 4 MS. CONROY: Objection.  
 5 THE WITNESS: I don't have a  
 6 roadmap, but the Zohydro story with  
 7 Rappaport is in other documents that  
 8 are in my opinions.  
 9 Q. (BY MS. SAULINO) There's no  
 10 way for us to look at your opinions and know  
 11 which other opinions relate to this opinion;  
 12 right?  
 13 A. You'd have to search for  
 14 Rappaport and Zohydro and then you'd find  
 15 them.  
 16 Q. In all of the 23 boxes that are  
 17 behind me, that's what we'd have to do?  
 18 A. No, you'd do it digitally  
 19 pretty quickly.  
 20 Q. But the digital version of the  
 21 23 boxes that are behind me --  
 22 A. Yes.  
 23 Q. -- we'd have to search for  
 24 those two names in the 23 boxes that are

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1 behind me, and then we would know the other  
 2 basis for your opinion?  
 3 A. Well, then you'd know other  
 4 supporting evidence, right.  
 5 Q. But not any -- but not all of  
 6 the other bases for your opinion?  
 7 A. No. Not all of the other bases  
 8 for my opinion. I reviewed a lot of other  
 9 documents. There's a lot of other support  
 10 for that opinion. I mean, I've read  
 11 Curtis Wright's depositions. I've read a lot  
 12 of Purdue documents.  
 13 Some of them -- some of those  
 14 are included in the introductory materials on  
 15 Purdue with respect to Curtis Wright,  
 16 Curtis Wright's approvals, Curtis Wright's  
 17 actions at the FDA in approving OxyContin  
 18 initially. So that's all -- a lot of that is  
 19 in there and pretty obvious.  
 20 Q. None of what you just said is  
 21 in your report; right?  
 22 MS. CONROY: Objection.  
 23 THE WITNESS: No.  
 24 MS. SAULINO: I know our



<p style="text-align: right;">Page 370</p> <p>1 Special Master needs to leave soon,  2 and wanted to put something on the  3 record.  4 SPECIAL MASTER COHEN: Do you  5 want to take a moment to do that now?  6 MS. SAULINO: Yeah. Why don't  7 we take a moment to do that.  8 SPECIAL MASTER COHEN: Okay.  9 I'm here just today. I'm not  10 here tomorrow. I have very  11 purposefully tried not to insert  12 myself into this deposition unless I  13 was either asked to or it became very  14 clear I needed to because I won't be  15 here tomorrow, and so I won't be in a  16 position to assert myself.  17 What I want to do now is just  18 make a little speech so that hopefully  19 I won't get a lot of phone calls  20 tomorrow because I'm going to be in  21 another deposition doing the same  22 thing in Washington, D.C. And what I  23 want to remind everybody is, first of  24 all, I'm going to turn to you,</p>	<p style="text-align: right;">Page 372</p> <p>1 I'll see you again soon, I'm sure.  2 MS. CONROY: Thank you.  3 MS. SAULINO: Thank you.  4 (Discussion off the record.)  5 MS. SAULINO: There have been a  6 few minutes that were used for  7 plaintiffs.  8 MS. CONROY: I think two  9 minutes is an exaggeration.  10 THE WITNESS: You can have an  11 extra two minutes.  12 Q. (BY MS. SAULINO) Let's look at  13 Opinion 129.  14 A. Let me just tell you what my  15 desire is, while the Special Master is here,  16 is to go to seven hours today, to take a  17 dinner break, and then come back and do  18 another two or three hours.  19 MS. SAULINO: Okay. We can  20 talk about that at the next break.  21 I appreciate you telling me,  22 but I'd like to -- for not to eat up  23 time right now figuring that out.  24 SPECIAL MASTER COHEN: That's</p>
<p style="text-align: right;">Page 371</p> <p>1 Dr. Egilman, and ask you to remember  2 tomorrow all the things that I said  3 today. That your answers can and  4 should be succinct. If you were to do  5 a review of all of your answers today,  6 the longest one was probably a minute,  7 and most of them were probably about  8 20 seconds or less.  9 That's how it should be  10 tomorrow, the same way.  11 There's no reason to interrupt  12 each other. I think it will help if  13 everybody just lets everybody answer  14 the question. And so it's my hope  15 that I don't receive any calls for  16 help tomorrow in settling disputes.  17 It's clear that you can do this  18 without me.  19 Any questions?  20 Okay. And I'm going to leave  21 in about 15 minutes because I have to  22 get to the airport to go to D.C. That  23 doesn't mean you all have to stop.  24 And thank you for buying me lunch, and</p>	<p style="text-align: right;">Page 373</p> <p>1 not my call.  2 THE WITNESS: Okay.  3 Q. (BY MS. SAULINO) Okay.  4 Looking at Opinion 129.  5 It's on page 81.  6 About the middle of the page.  7 A. Okay.  8 Q. Your opinion there is "Venture  9 member McKesson marketed opioids"; right?  10 A. Correct.  11 Q. And I have a copy of B129 for  12 support.  13 A. Is this the whole -- do you  14 want the whole McKesson?  15 Q. What are you asking for,  16 Dr. Egilman?  17 A. The whole McKesson Redweld.  18 Q. So let's first look at  19 Exhibit B129, please, which is what you cite  20 here in your report on page 81.  21 A. Sure.  22 Q. Okay. Exhibit B129 is 13-page  23 document; correct?  24 MS. CONROY: There's no writing</p>

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1 on this one.  
2 THE WITNESS: Correct.  
3 Q. (BY MS. SAULINO) I'm going to  
4 mark it as Exhibit 20. Is that -- do you  
5 have a different one than I do?  
6 A. No.  
7 (Whereupon, Deposition Exhibit  
8 Egilman 20, Opinion - "venture" member  
9 McKesson marketed opioids, was marked  
10 for identification.)  
11 Q. (BY MS. SAULINO) All right.  
12 So in Exhibit B129 -- Exhibit B129, I know  
13 that it's small type, but I know that this is  
14 something that you relied on for your  
15 opinion, so you looked at it; right?  
16 A. Correct.  
17 Q. Okay. Nowhere in this document  
18 does the word "opioid" appear; correct?  
19 A. Correct.  
20 Q. And nowhere in this document  
21 does the name of any specific opioid appear;  
22 correct?  
23 A. Correct.  
24 Q. Okay. And as a medical doctor,

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1 you would agree with me that a physician  
2 prescription is required in order to fill a  
3 prescription for opioids; right?  
4 In order to fill a prescription  
5 at a pharmacy for opioids, you need a  
6 prescription from a medical doctor; right?  
7 A. Give me the -- under the law?  
8 Q. Yes, Dr. Egilman.  
9 A. Under the law, that's correct  
10 but I think, because of the free sampling  
11 program, there's reason to believe that that  
12 was not required.  
13 Q. Okay. Dr. Egilman, what you  
14 are saying right now, does that have anything  
15 to do with your Opinion 129?  
16 A. Oh, yes.  
17 Q. So you believe that  
18 Opinion 129, which is supported by a  
19 three-page exhibit, somehow supports the  
20 statement that the free sampling program  
21 changed the fact that a prescription is  
22 required to receive opioids from a  
23 pharmacist?  
24 A. No, that's not what I said.

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1 Q. All right. Dr. Egilman, you  
2 would agree with me, would you not, that a  
3 prescription is required for a pharmacist to  
4 fill an order for opioids; right? In order  
5 to give opioids to a patient, a pharmacist  
6 needs a prescription from a doctor; right?  
7 A. That's what the pharmacist's  
8 role is.  
9 Q. Sir, this is a very simple  
10 question.  
11 A. I don't think so.  
12 Q. You disagree that a  
13 prescription is required in order for a  
14 pharmacist to provide opioids to a patient?  
15 A. No. I said limited to a  
16 pharmacist. That's why I asked for that  
17 modifier. There were pill mills where the  
18 pill mills were prescribing -- were filling  
19 prescriptions without pharmacist  
20 intervention. So this is not always the  
21 case, that pharmacists were required in this  
22 hockey stick from 2000 -- 1996 until now.  
23 Q. Under the law, a physician  
24 prescription is required in order to fill a

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1 prescription for opioids; correct?  
2 A. That's correct.  
3 Q. Okay. There is no discussion  
4 of pill mills anywhere in Exhibit B129;  
5 correct?  
6 A. Correct.  
7 Q. There is no evidence of pill  
8 mills anywhere in Exhibit B129; correct?  
9 A. That's correct.  
10 Q. So pill mills have nothing to  
11 do with Exhibit B129; correct?  
12 A. Not correct.  
13 Q. There is nothing in  
14 Exhibit B129 that would suggest to us that  
15 pill mills have anything to do with it;  
16 right?  
17 A. I don't think that's true.  
18 When you say -- are you a part of the "us"?  
19 I think that's not true. If you're not part  
20 of the "us."  
21 Q. I'm basing my question, sir, on  
22 what is written on the pages you have  
23 provided as support for your opinion.  
24 A. Well, that wasn't the question

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1 you asked.  
2 SPECIAL MASTER COHEN:  
3 Dr. Egilman, I think you shouldn't  
4 characterize the question she asked  
5 and just try your best to answer them.  
6 THE WITNESS: I did. But I  
7 mean, that's why I asked for -- I  
8 asked for --  
9 SPECIAL MASTER COHEN: No, you  
10 didn't ask for a clarification. You  
11 recharacterized her question.  
12 So if you think she asked  
13 something different, then ask for her  
14 to clarify.  
15 THE WITNESS: Okay.  
16 So --  
17 Q. (BY MS. SAULINO) All right.  
18 You and I have already agreed that this  
19 document nowhere says the word "opioid" nor  
20 the name of any particular opioid; correct?  
21 A. Correct.  
22 Q. You and I have also agreed that  
23 this document -- nowhere in it says anything  
24 about pill mills; right?

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1 A. Correct.  
2 Q. And you and I have also agreed  
3 that under the law, a physician prescription  
4 is required to fill a prescription for  
5 opioids; right?  
6 A. Correct.  
7 Q. Okay. And yet you believe that  
8 this document supports your opinion that  
9 venture member McKesson marketed opioids;  
10 right?  
11 A. Correct.  
12 Q. Okay. And in your clinical  
13 practice, you've never had a distributor make  
14 a sales call to your office; right?  
15 A. Correct.  
16 Q. You've also never had a  
17 pharmacy make a sales call to your office;  
18 right?  
19 A. Correct.  
20 Q. In your clinical practice, no  
21 distributor has ever sent you a fax blast for  
22 a medicine; right? As defined in  
23 Exhibit B129?  
24 A. Correct.

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1 Q. And no pharmacy has ever sent  
2 you a fax blast for a medicine; right?  
3 A. I don't think that's correct.  
4 Q. As defined in Exhibit B129?  
5 A. If you limit it to Health Mart,  
6 that's correct. If you include Medco, not  
7 correct.  
8 Q. In your clinical practice, no  
9 distributor or pharmacy has ever sent an Rx  
10 bulletin to your office; right?  
11 A. That's correct.  
12 Q. In your clinical practice, no  
13 distributor or pharmacy has ever sent an Rx  
14 mail to your office; right?  
15 A. Correct.  
16 Q. In your clinical practice, no  
17 distributor or pharmacy has ever sent an Rx  
18 update message to your office; right?  
19 A. Correct.  
20 Q. In your clinical practice, no  
21 distributor or pharmacy has ever delivered a  
22 video presentation to your office; correct?  
23 (Special Master leaves.)  
24 A. Correct.

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1 Q. In your clinical practice, no  
2 distributor or pharmacy has ever autoshipped  
3 a medication to your office; correct?  
4 A. Correct.  
5 Q. And in your clinical practice,  
6 no distributor or pharmacy has ever sent you  
7 an e-mail marketing a medicine; correct?  
8 A. No.  
9 Q. You've received e-mails from  
10 distributors or pharmacies marketing a  
11 medicine?  
12 A. That's my recollection.  
13 Q. Have you provided them in this  
14 litigation?  
15 A. No. You didn't ask if there's  
16 been any.  
17 Q. Do you still have that e-mail,  
18 sir?  
19 A. It would have been a fax.  
20 Q. Well, my question was about an  
21 e-mail, but you recall having received a fax?  
22 A. I think so, yeah.  
23 Q. From who?  
24 A. I think it was Medco.

<p style="text-align: right;">Page 382</p> <p>1 Q. And what is your recollection  2 of what it said?  3 A. It was to switch patients from  4 Celebrex to Vioxx.  5 Q. And you recall having received  6 that when?  7 A. I think so. I don't think I  8 have it, but I think so.  9 Q. When do you recall having  10 received that?  11 A. It would have been when I was  12 practicing in clinic.  13 Q. Okay. You don't recall any  14 such marketing communication with respect to  15 any opioid; right?  16 A. Correct.  17 Q. Okay.  18 Now, you don't have any  19 deposition testimony that you cite here to  20 support Opinion B129; right?  21 A. Correct.  22 Q. You don't have any other  23 documents that you cite; right?  24 A. Correct.</p>	<p style="text-align: right;">Page 384</p> <p>1 A. I think so.  2 Q. Okay. And you couldn't get  3 access; right?  4 A. Correct. Because I don't have  5 Jones Day's skills.  6 Q. Because this site is for  7 McKesson partners and customers only; right?  8 As it says here?  9 A. Correct.  10 Q. And physicians are not McKesson  11 customers; right?  12 MS. CONROY: Objection.  13 THE WITNESS: Depends how you  14 define "customer."  15 Q. (BY MS. SAULINO) You as a  16 physician could not get access to this web  17 portal; correct?  18 A. Correct.  19 Q. You don't know any physician  20 who could get access to this web portal;  21 correct?  22 MS. CONROY: Objection.  23 THE WITNESS: I don't know any  24 who have tried.</p>
<p style="text-align: right;">Page 383</p> <p>1 Q. You've never visited the  2 McKesson Connect web page, have you?  3 It's cited under Rx detail on  4 demand on the second half of the first page?  5 First page.  6 Second column.  7 A. I think I asked one of my staff  8 to get access to it, but we didn't --  9 couldn't get in it.  10 We looked for it on the Wayback  11 Machine.  12 Q. So you did look for the  13 McKesson Connect web page?  14 A. I think so.  15 Q. Okay.  16 Handing you what's been marked  17 as Exhibit 21 to your deposition.  18 (Whereupon, Deposition Exhibit  19 Egilman 21, Login to McKesson Connect,  20 was marked for identification.)  21 Q. (BY MS. SAULINO) Which is the  22 log-in page for McKesson Connect.  23 A. Okay.  24 Q. Is this what you saw?</p>	<p style="text-align: right;">Page 385</p> <p>1 Q. (BY MS. SAULINO) And  2 physicians are not McKesson partners;  3 correct?  4 MS. CONROY: Objection.  5 THE WITNESS: Do you mean as  6 defined in your -- on your web portal?  7 Q. (BY MS. SAULINO) Yes,  8 Dr. Egilman.  9 A. That's my understanding.  10 Q. Okay. Dr. Egilman, if you  11 could look at Opinion 385, which is at the  12 bottom of page 119.  13 A. Okay.  14 Q. Your opinion here is "Actavis  15 had marketing agreements with some  16 distributors and provided McKesson with  17 talking points to sell oxymorphone to  18 pharmacists"; right?  19 A. Yes.  20 Q. All right. And I have  21 Exhibit B385 right here unless you have a  22 different copy of it.  23 A. No.  24 Q. Okay. So I'm giving you what's</p>

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1 been marked as Exhibit 2 --  
2 Oh, you do have a different  
3 copy?  
4 A. I have a whole deposition.  
5 Q. Well, Dr. Egilman, you only  
6 cited seven pages here in your Exhibit B385.  
7 A. I think you got provided the  
8 whole deposition.  
9 Q. Dr. Egilman, I'm looking at  
10 Exhibit B385; right?  
11 A. Right.  
12 Q. And you cite as the basis for  
13 your opinion, McCormick depo at 126. Right?  
14 On page 1 of your Exhibit here?  
15 MS. CONROY: Do you have a  
16 copy?  
17 MS. SAULINO: Yes. Sorry.  
18 THE WITNESS: That's obviously  
19 a typo, because it's 128.  
20 Q. (BY MS. SAULINO) Okay. So  
21 page 128 is the page that you're relying on  
22 in this deposition for this opinion; right?  
23 A. No. Also McCormick depo at  
24 249.

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1 Q. When you say "also McCormick  
2 depo at 249," you mean because you see that  
3 attached on page 3?  
4 A. No, there's a footnote.  
5 Q. Oh, I see it, on page 2.  
6 You're right. I can see it there.  
7 Okay. Now, Dr. Egilman, you  
8 have seen -- so what you're doing here in  
9 this opinion is paraphrasing something that  
10 you read in a deposition; correct?  
11 MS. CONROY: Objection.  
12 THE WITNESS: No, not exactly.  
13 Q. (BY MS. SAULINO) Okay.  
14 There's no way for us to know what your  
15 process was here; right?  
16 MS. CONROY: Objection.  
17 THE WITNESS: I don't think  
18 that's correct.  
19 Q. (BY MS. SAULINO) You don't  
20 provide a hypothesis that you answered;  
21 right?  
22 A. Well, that -- it's not  
23 explicit, but it would be implicit. The null  
24 hypothesis would be Actavis -- McKesson did

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1 not market for its customers.  
2 Q. And you don't write that  
3 anywhere here; right?  
4 A. Correct.  
5 Q. And you don't anywhere here  
6 provide -- other than the snippets that you  
7 provide in these seven pages, you don't  
8 provide additional documents or data; right?  
9 A. No.  
10 MS. CONROY: Objection.  
11 Q. (BY MS. SAULINO) Other than  
12 what you provide in these seven pages, you  
13 don't provide additional documents or data  
14 that support this opinion; right?  
15 A. No.  
16 Q. Somewhere else we would find  
17 additional documents or data that support  
18 this opinion?  
19 A. Yes.  
20 Q. And where would we find that?  
21 A. Well, the depositions that I  
22 cited were -- should -- were attached, as I  
23 understand it. And were -- and were  
24 digitally sent to you.

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1 Q. Okay. Doctor --  
2 A. So the complete depositions,  
3 and then, of course, the complete advertising  
4 program that was reviewed by McKesson is also  
5 attached.  
6 Q. What I have attached,  
7 Dr. Egilman, is seven pages of B385; right?  
8 And citations to particular pages that you've  
9 screenshotted on Exhibit B385; right?  
10 A. It's not my understanding of  
11 what was provided. My understanding of what  
12 was provided was the two documents I have in  
13 my hand and the depositions I have in the  
14 folder.  
15 Q. I'm looking at what you wrote  
16 in Exhibit B385 which is a part of your  
17 report as you just explained to me a bit ago;  
18 right?  
19 A. The report includes the opinion  
20 and the attached documents. You've got them  
21 both.  
22 Q. Dr. Egilman, you did not attach  
23 those documents, right? You screenshotted  
24 portions of them?



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1 A. No, it's my understanding the  
2 attached documents were provided with the  
3 report.  
4 Q. Okay. So if we include the  
5 documents that you say were attached, there's  
6 nothing else; right?  
7 A. There's nothing else attached  
8 to this opinion, but there are other McKesson  
9 marketing for opioid manufacturer documents  
10 that are in the McKesson Redweld which we  
11 have.  
12 Q. Which you don't cite here;  
13 right?  
14 A. Which I don't cite here, right.  
15 Q. Which you don't  
16 cross-reference, right?  
17 A. Which I don't cross-reference  
18 in this opinion, that's right.  
19 Q. And the McKesson Redweld that  
20 you're talking about is actually a stack of  
21 Redwelds; right?  
22 A. Right.  
23 Q. Okay. And we're going to mark  
24 that stack as Exhibit 23.

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1 A. There was one Redweld for all  
2 of these. No?  
3 (Whereupon, Deposition Exhibit  
4 Egilman 23, compilation of Redweld  
5 folders, was marked for  
6 identification.)  
7 Q. (BY MS. SAULINO) There was?  
8 A. I thought so, but maybe I'm  
9 wrong. I didn't do this part.  
10 Q. Well, we'll mark that stack  
11 as --  
12 A. The lawyers did this part.  
13 Q. We'll mark that stack as  
14 Exhibit 23.  
15 Now, what are you saying now  
16 that that --  
17 A. Hang on.  
18 Q. Stack represents --  
19 A. Other documents indicating  
20 marketing agreements between Mallinckrodt and  
21 opioid manufactures to market opioids.  
22 (Reporter asked for  
23 clarification.)  
24 THE WITNESS: That McKesson was

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1 marketing opioids for manufacturers of  
2 opioids.  
3 Q. (BY MS. SAULINO) Okay. And  
4 you don't provide that stack -- that listing  
5 of that stack in your report anywhere; right?  
6 A. The listing of the stack is not  
7 here. Each of the individual documents and  
8 opinions is in the report.  
9 Q. All right. Let me ask you  
10 this, Dr. Egilman.  
11 You've not ever seen any  
12 talking points that McKesson used to market  
13 directly to doctors, have you?  
14 A. No.  
15 Just an administrative  
16 question. Did you want this Exhibit 22 to  
17 include the entire Redweld or just this  
18 document?  
19 Q. Yes. Let's make Exhibit 22  
20 include the entire Redweld, which you're now  
21 saying is your complete Exhibit 22 -- the  
22 complete version of Exhibit 22; right?  
23 MS. CONROY: Objection.  
24 (Whereupon, Deposition Exhibit

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1 Egilman 22, Opinion B.385, was marked  
2 for identification.)  
3 THE WITNESS: No problem. Just  
4 asking.  
5 Q. (BY MS. SAULINO) Now,  
6 Dr. Egilman, do you hold yourself out to be  
7 an expert in FDA regulations?  
8 A. Based on my definition of  
9 "expert," yes.  
10 Q. Okay. Have you ever been  
11 qualified by a court as an expert in FDA  
12 regulations?  
13 A. I've testified in court on FDA  
14 regulations.  
15 Q. Have you ever been qualified by  
16 a court as an expert in FDA regulations?  
17 A. I assume if I testified, I was  
18 qualified.  
19 Q. Okay. So you don't know?  
20 A. Well, normally -- I don't  
21 recall -- I'm not -- not usually there when  
22 the motions in limine are made. And so I  
23 assume if I come to court and I testify about  
24 FDA regulations, that that's all been dealt

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1 with before, that a judge has approved my  
2 testimony about FDA regulations.  
3 Q. You would agree with me that  
4 pharmaceutical manufacturers have to follow  
5 FDA regulations; right?  
6 A. What do you mean by "have to"?  
7 Q. You find the question  
8 ambiguous?  
9 A. I do.  
10 You know, there's lots of cases  
11 where manufacturers have not followed FDA  
12 regulations. Right? I've got -- or  
13 distributors. I've got all kinds of examples  
14 here.  
15 So when you say "have to," I  
16 know that there are laws that say they should  
17 or shall, and I know that generally when they  
18 don't, there's no penalty.  
19 Q. You would agree with me that  
20 FDA regulations hold the force of law for  
21 pharmaceutical manufacturers; right?  
22 A. Some do.  
23 Q. And since you are holding  
24 yourself out as an expert in FDA regulations,

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1 you would agree with me that the message --  
2 the marketing messaging that pharmaceutical  
3 manufacturers use is something that has to be  
4 approved by the FDA; right?  
5 MS. CONROY: Objection.  
6 THE WITNESS: No, not exactly.  
7 Q. (BY MS. SAULINO) What is your  
8 disagreement with that statement?  
9 A. That's not what happens.  
10 Marketing messages get sent to  
11 the FDA. The FDA reviews a small percentage  
12 of them, but they never send an approval  
13 letter out for the ones they don't look at.  
14 So marketing for the most part, the FDA works  
15 on a snitch system where one company snitches  
16 on another company, and that's how they find  
17 out that somebody's violating the off-label  
18 rules generally, and then they may clamp  
19 down.  
20 But the FDA, by itself, has  
21 very little staff, and they certainly don't  
22 review all of the marketing messages and  
23 approve them. They get them.  
24 Q. What's the basis for what you

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1 just said?  
2 A. Well, I was at a conference  
3 where the FDA people spoke, and I sat at a  
4 table with the people from DDMAC who told me  
5 what the process was. That was around 2003,  
6 2004.  
7 Q. And the officials from DDMAC  
8 told you --  
9 A. Excuse me, I'm not done with  
10 that answer. You said what's the basis for  
11 that. Okay?  
12 Q. I'd like to know what the  
13 officials from DDMAC told you.  
14 A. Do you want the incomplete  
15 answer, I'm done with the answer. No  
16 problem. Just it's incomplete.  
17 If you want to cut me off, no  
18 problem.  
19 Q. The officials from DDMAC told  
20 you that the FDA process is based on a snitch  
21 system?  
22 A. They said that that was -- that  
23 generated most of their actions.  
24 Q. Okay. And they told you --

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1 A. And they told me they had six  
2 staff to review all of the marketing messages  
3 that were submitted annually at that time,  
4 and they didn't -- they didn't review them.  
5 Q. So your --  
6 A. They didn't review nearly all  
7 of them.  
8 Q. So you're basing this expertise  
9 on one conversation you had at a dinner?  
10 MS. CONROY: Objection.  
11 THE WITNESS: No. There was a  
12 whole conference on this issue. It  
13 was discussed at the conference.  
14 Abrams was speaking at the conference,  
15 and a lot of people -- because of the  
16 lunch, I had a lot of time to have  
17 side conversations and more detailed  
18 conversations about the process than  
19 just what was in the lecture series.  
20 Q. (BY MS. SAULINO) So you're  
21 basing this opinion on one conference that  
22 you went to several years ago?  
23 A. No. I've read other things  
24 about this process. I've read documents

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1 about this process in the Vioxx litigation,  
 2 the Actos litigation, in the Zyprexa  
 3 litigation, in the Purdue litigation.  
 4 So, I mean, I've seen how the  
 5 FDA doesn't regulate marketing over time.  
 6 Q. Okay. Your opinion at  
 7 page 126, 7.430?  
 8 A. 7 which?  
 9 Q. 430. Bottom of page 126.  
 10 A. Okay.  
 11 Q. All right. You -- in Exhibit  
 12 B430, which I have marked here as Exhibit 24.  
 13 (Whereupon, Deposition Exhibit  
 14 Egilman 24, Opinion-McKesson had  
 15 marketing agreements with  
 16 Mallinckrodt, Purdue and Teva, was  
 17 marked for identification.)  
 18 THE WITNESS: Are these in the  
 19 full Mallinckrodt? Have you got that  
 20 one? Because there's three documents  
 21 cited.  
 22 Q. (BY MS. SAULINO) Yes, there  
 23 are three documents cited and one attached;  
 24 right?

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1 A. Well, they were all attached.  
 2 One was excerpted.  
 3 Q. Dr. Egilman, I'll give you each  
 4 of the documents that's cited when we get to  
 5 them. Okay?  
 6 A. Okay.  
 7 Q. All right. So your opinion  
 8 here is "McKesson had marketing agreements  
 9 with Mallinckrodt, Purdue, and Teva"; right?  
 10 A. Correct.  
 11 Q. Okay. And for that opinion,  
 12 you cite three documents; right?  
 13 A. Correct.  
 14 Q. And only three documents;  
 15 right?  
 16 A. Correct.  
 17 Q. Okay. So one of them is  
 18 actually page 2 of Exhibit B430; right?  
 19 A. Correct.  
 20 Q. Or an excerpt from one of them;  
 21 right?  
 22 A. Correct.  
 23 Q. Okay. And in that excerpt, we  
 24 see that this is a McKesson manufacturer

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1 marketing product promotional agreement;  
 2 right?  
 3 A. Correct.  
 4 Q. With Purdue Pharma; right?  
 5 A. Correct.  
 6 Q. And if you look at the  
 7 beginning of the last paragraph that appears  
 8 in your screenshot here.  
 9 A. Right.  
 10 Q. And you see -- and you've  
 11 actually highlighted it here. You see  
 12 "Supplier will provide MSH with and approve  
 13 all documents, materials, and/or information  
 14 in any format, including supplier website  
 15 links for the services hereunder," and it's  
 16 then in quotes, "supplier content."  
 17 A. Correct.  
 18 Q. "It is expressly understood  
 19 that MSH shall rely upon the supplier content  
 20 to perform services"; right?  
 21 A. You read that part correctly.  
 22 Q. Okay. Let's look at the other  
 23 two documents that you cite there.  
 24 Well, I'll give you one of

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1 them.  
 2 Here's the other one. And  
 3 we're going to make them all a part of  
 4 Exhibit -- what number are we on there, sir?  
 5 MS. CONROY: 24.  
 6 MS. SAULINO: 24.  
 7 Q. (BY MS. SAULINO) Okay. Now,  
 8 looking at these other two documents, let's  
 9 start with the document ending at the bottom  
 10 in Bates No. 3368.  
 11 A. Okay.  
 12 Q. Okay?  
 13 And that's a McKesson  
 14 manufacturer marketing contract product  
 15 promotional agreement. Right?  
 16 A. Yes.  
 17 Q. And this one is with Teva;  
 18 right?  
 19 A. Yes.  
 20 Q. And if you look at the last  
 21 paragraph on the first page, you see it says  
 22 "The content of any document, material or  
 23 information provided by Teva to McKesson for  
 24 inclusion in the program, supplier content

<p style="text-align: right;">Page 402</p> <p>1 under this agreement is the sole  2 responsibility of Teva, and Teva represents  3 and warrants that the supplier content  4 complies with all applicable laws"; right?  5 A. That's part of what it says.  6 Q. Well, that's the whole first  7 sentence; right?  8 A. You read the whole first  9 sentence.  10 Q. Okay. And if we look at the  11 third document that you've cited for this  12 opinion, which is Bates ending 3261?  13 A. Right.  14 Q. Do you see that that's a  15 McKesson manufacturer marketing product  16 promotional agreement; right?  17 A. Correct.  18 Q. And this one is with  19 Mallinckrodt; right?  20 A. Correct.  21 Q. And you see the paragraph in  22 the middle of the page, right under what  23 it -- right under the title in the -- that  24 says "Promotional product." The next</p>	<p style="text-align: right;">Page 404</p> <p>1 is said nowhere in the documents we just  2 looked at; right?  3 A. That's correct. But you didn't  4 ask that. It's in other documents.  5 Hang on one second while I try  6 to put 24 together.  7 Okay. Go ahead.  8 Q. Okay. Let's look at  9 Opinion B321.  10 It's on page 110.  11 A. Okay.  12 Q. Opinion B321 is "The venture  13 McKesson's suspicious order monitoring SOM  14 was inadequate"; right?  15 A. Correct.  16 Q. And I will hand you  17 Exhibit B321 which is Exhibit 25 to your  18 deposition.  19 A. Hang on one second.  20 (Whereupon, Deposition Exhibit  21 Egilman 25, Opinion - the "Venture" -  22 McKesson's SOM was inadequate, was  23 marked for identification.)  24 Q. (BY MS. SAULINO) Dr. Egilman,</p>
<p style="text-align: right;">Page 403</p> <p>1 paragraph?  2 A. Yes.  3 Q. It says "The content of any  4 document, material, or information provided  5 or approved by Mallinckrodt to McKesson for  6 inclusion in the program or service supplier  7 content under this agreement is the sole  8 responsibility of Mallinckrodt, and  9 Mallinckrodt represents and warrants that the  10 supplier content complies with all applicable  11 laws"; right?  12 A. You read that part of this  13 paragraph correctly.  14 Q. Okay.  15 You have not seen in your  16 investigation nor do you cite any contract  17 between a manufacturer and distributor in  18 which the distributor controls the content of  19 the message, have you?  20 A. That's not true. This is a  21 McKesson agreements and contracts where  22 McKesson says that their attorneys have to  23 approve any of the material that goes out.  24 Q. Dr. Egilman, what you just said</p>	<p style="text-align: right;">Page 405</p> <p>1 can we use the one I gave you? Or no?  2 A. I'll let you know after I see  3 if it's complete.  4 Q. Well, I gave you what was  5 produced to us.  6 MS. CONROY: Objection.  7 THE WITNESS: What number are  8 we on, 321?  9 Q. (BY MS. SAULINO) Yes.  10 Do you have reason to believe  11 that what I gave you as Exhibit B321 which  12 was produced to us is incomplete?  13 A. I have no idea.  14 Q. Well, we're short on time,  15 Dr. Egilman, and you're using a lot of it  16 looking around to see whether that is a  17 complete document that I gave you which was  18 what was produced to us.  19 MS. CONROY: Objection.  20 THE WITNESS: As you know,  21 we've already had many instances where  22 what you claimed was complete was  23 incomplete. So I'd like to be able to  24 have the complete situation before I</p>

<p style="text-align: right;">Page 406</p> <p>1 testify.</p> <p>2 But go ahead.</p> <p>3 Q. (BY MS. SAULINO) Exhibit B321,</p> <p>4 which was produced to us as pages one of 5, 2</p> <p>5 of 5, 3 of 5, 4 of 5, and 5 of 5, which I</p> <p>6 have put in front of you as Exhibit 25 to</p> <p>7 your deposition cites one document; correct?</p> <p>8 A. Correct. I think it's a</p> <p>9 PowerPoint.</p> <p>10 Q. A PowerPoint from 2014; right?</p> <p>11 A. Correct.</p> <p>12 Q. And from this PowerPoint, you</p> <p>13 opine that McKesson's SOM was inadequate;</p> <p>14 correct?</p> <p>15 A. Right.</p> <p>16 Q. You don't cite any deposition</p> <p>17 testimony, do you?</p> <p>18 A. Correct.</p> <p>19 Q. You don't cite any other</p> <p>20 documents here, do you?</p> <p>21 A. Correct.</p> <p>22 Q. You don't provide any basis for</p> <p>23 your hypothesis; right?</p> <p>24 A. Not in this opinion.</p>	<p style="text-align: right;">Page 408</p> <p>1 the CSMP?</p> <p>2 A. I'd have to look at the</p> <p>3 PowerPoints. It's in the PowerPoints.</p> <p>4 Q. Other than the PowerPoint, do</p> <p>5 you have any basis for that knowledge?</p> <p>6 A. No.</p> <p>7 Q. Can you identify how McKesson</p> <p>8 set thresholds for various drugs with the</p> <p>9 same active ingredient?</p> <p>10 A. No.</p> <p>11 Q. Can you identify when a</p> <p>12 customer's threshold resets under McKesson's</p> <p>13 CSMP?</p> <p>14 A. No.</p> <p>15 Q. Can you state the year that</p> <p>16 McKesson implemented its Controlled Substance</p> <p>17 Monitoring Program?</p> <p>18 A. No.</p> <p>19 Q. You are aware of no evidence</p> <p>20 that McKesson shipped orders in excess of</p> <p>21 thresholds at any time to Cuyahoga County</p> <p>22 under the CSMP; correct?</p> <p>23 A. I think that's correct.</p> <p>24 Q. You are aware of no evidence</p>
<p style="text-align: right;">Page 407</p> <p>1 Q. Right. You don't provide any</p> <p>2 challenge that you did for that hypothesis;</p> <p>3 right?</p> <p>4 Here in this opinion?</p> <p>5 A. Correct. Correct.</p> <p>6 Q. Okay.</p> <p>7 And can you state the year that</p> <p>8 McKesson implemented the Lifestyle Drug</p> <p>9 Monitoring Program?</p> <p>10 A. I don't recall.</p> <p>11 Q. Can you state the year that</p> <p>12 McKesson implemented its Controlled Substance</p> <p>13 Monitoring Program?</p> <p>14 A. I don't recall.</p> <p>15 Q. Can you state the standard</p> <p>16 threshold that McKesson set under the</p> <p>17 Lifestyle Drug Monitoring Program?</p> <p>18 A. No.</p> <p>19 Q. Can you name the controlled</p> <p>20 substances that McKesson monitored under the</p> <p>21 Lifestyle Drug Monitoring Program?</p> <p>22 A. No.</p> <p>23 Q. Can you state how McKesson set</p> <p>24 thresholds for controlled substances under</p>	<p style="text-align: right;">Page 409</p> <p>1 that McKesson shipped orders in excess of</p> <p>2 thresholds to Summit County at any time under</p> <p>3 the CSMP?</p> <p>4 A. I think that's correct.</p> <p>5 Q. As you sit here today, you</p> <p>6 cannot identify a single suspicious order</p> <p>7 McKesson shipped to Summit County; right?</p> <p>8 A. As identified by McKesson? I</p> <p>9 think that's correct.</p> <p>10 Q. To Cuyahoga County?</p> <p>11 A. Same answer.</p> <p>12 Q. To Akron?</p> <p>13 A. Same answer.</p> <p>14 Q. To Cleveland?</p> <p>15 A. Same answer.</p> <p>16 Q. Can you identify the document a</p> <p>17 customer must submit to McKesson to request</p> <p>18 an increase to a threshold?</p> <p>19 A. No.</p> <p>20 Q. As you sit here today, you are</p> <p>21 aware of no evidence that McKesson changed a</p> <p>22 customer's threshold without first reviewing</p> <p>23 a request from the customer; right?</p> <p>24 A. No, I don't think that's</p>



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1 correct.  
 2 Q. What evidence are you aware of,  
 3 sir?  
 4 A. If you look at the \$150 million  
 5 fine that McKesson paid to DOJ, I think  
 6 there's evidence in there.  
 7 Q. So you're simply basing your  
 8 opinion on suppositions that you've made  
 9 based on a government fine?  
 10 MS. CONROY: Objection.  
 11 Q. (BY MS. SAULINO) Correct?  
 12 A. No. I'm basing it on the  
 13 findings of the DOJ with respect to  
 14 McKesson's overshipping.  
 15 Q. So the findings of the DOJ  
 16 would be the best evidence there; right? Not  
 17 your expert opinion?  
 18 A. My expert opinions are based in  
 19 part on those findings.  
 20 Q. Can you identify the tool  
 21 McKesson used to analyze dispensing data  
 22 under the CSMP?  
 23 A. No.  
 24 Q. Can you identify any other

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1 analytic tools McKesson used to analyze  
 2 customer thresholds under the CSMP?  
 3 A. No. I'd have to look at the  
 4 document.  
 5 Q. Can you identify how McKesson  
 6 currently sets customer thresholds?  
 7 A. No.  
 8 Q. Can you identify how McKesson  
 9 calculated salesperson compensation prior to  
 10 2012?  
 11 A. No.  
 12 Q. You are aware of no evidence of  
 13 any sales compensation incentive tied  
 14 directly to opioid sales, are you, for  
 15 McKesson?  
 16 A. Do you mean for a salesperson?  
 17 Q. Yes.  
 18 A. I think that's correct.  
 19 Q. Okay. Dr. Egilman, before we  
 20 conclude today, I want to make sure to mark a  
 21 number of things.  
 22 A. Are we concluding today?  
 23 Q. Well, at least concluding  
 24 before the break and then we can talk about

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1 your request for coming back after dinner.  
 2 So first, you have a number of  
 3 colored folders that have numbers on them  
 4 that you have sat in front of you here today;  
 5 right?  
 6 A. I do. I also have some notes.  
 7 Q. Some notes. Okay.  
 8 And you brought those intending  
 9 to use these colored folders and notes during  
 10 your deposition today?  
 11 MS. CONROY: Objection.  
 12 THE WITNESS: No. Not  
 13 necessarily.  
 14 Q. (BY MS. SAULINO) Well, you've  
 15 laid them out very carefully, taken up a good  
 16 amount of our precious space here at the  
 17 table. So you brought them for a reason;  
 18 right?  
 19 A. I thought they would be helpful  
 20 from time to time, yes.  
 21 Q. Okay.  
 22 A. They have been helpful from  
 23 time to time. But I can't predict what the  
 24 question is, so I brought things that I

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1 thought you might ask about that might be  
 2 helpful as answers.  
 3 Q. And you've numbered them 1  
 4 through -- it looks like 32; is that right?  
 5 Is new bias?  
 6 A. I don't know.  
 7 Q. Okay. Can we move your  
 8 McKesson Redweld?  
 9 A. Sure.  
 10 Q. Okay. And I think this is part  
 11 of your McKesson Redweld.  
 12 All right. And I think that  
 13 was Exhibit B62.  
 14 A. Well, it's empty now.  
 15 Q. I'm looking at the title of the  
 16 blue folder.  
 17 MS. CONROY: Give it to me.  
 18 Q. (BY MS. SAULINO) Okay. So  
 19 these colored folders, you had intended to  
 20 rely on these in your deposition?  
 21 A. I did rely on them.  
 22 Q. Okay. I'd like to mark these  
 23 as an exhibit to your deposition.  
 24 And --

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1 A. Fine with me.  
2 Q. We can mark them as one  
3 exhibit. I'm guessing you want to leave them  
4 laid out here until you're done testifying  
5 tomorrow; is that right?  
6 A. That would be my preference.  
7 Q. Okay. So why don't we mark  
8 these colored folders collectively as 26?  
9 (Whereupon, Deposition Exhibit  
10 Egilman 26, Dr. Egilman's reference  
11 folders, was marked for  
12 identification.)  
13 Q. (BY MS. SAULINO) And what is  
14 that sort of technicolor folder there?  
15 A. That's the one with five bad  
16 acts and limitations.  
17 Q. Okay.  
18 So --  
19 A. Here's my notes. Do you want  
20 my notes too?  
21 Q. Yes. Why don't we mark those  
22 as Exhibit 27. So let's give our court  
23 reporter a minute to give us the numbers.  
24 I just wanted to mark the notes

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1 as 27.  
2 So the notes are 27.  
3 (Whereupon, Deposition Exhibit  
4 Egilman 27, Dr. Egilman's notes, was  
5 marked for identification.)  
6 MS. SAULINO: And we'll figure  
7 out where to put the sticker for 26 at  
8 the break.  
9 So Exhibit 28, then, I'd like  
10 to mark your box of your copies of the  
11 exhibits that you have been  
12 referencing.  
13 MS. CONROY: I put the folders  
14 back in it.  
15 (Whereupon, Deposition Exhibit  
16 Egilman 28, Dr. Egilman's opinion  
17 folders with stickies and notations,  
18 was marked for identification.)  
19 MS. SAULINO: Okay.  
20 Okay. Now, the colored folders  
21 in front of you we've made Exhibit 26.  
22 Your box with your notes on some  
23 exhibits is 28.  
24 Your notes are Exhibit 27.

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1 Is there anything else that you  
2 have in your vicinity here that you  
3 intended to use today to testify?  
4 THE WITNESS: No.  
5 Q. (BY MS. SAULINO) Okay. Now,  
6 the posters behind you --  
7 A. Oh, yeah, the posters.  
8 Q. You have a number of posters  
9 there.  
10 A. Yeah, the posters.  
11 Q. You brought a number of posters  
12 here?  
13 A. Yeah. About 15 posters.  
14 Q. Why did you bring 15 posters?  
15 A. No reason for 15, but you saw  
16 we used one that was relevant.  
17 These are some of the more  
18 important documents in my view. So.  
19 Q. I see. So the poster boards  
20 behind you are some of the more important  
21 documents?  
22 A. And also the poster that was  
23 presented on Saturday wasn't given to you.  
24 So we can't read it on a small copy. So I

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1 brought that.  
2 Q. Are any of the other posters  
3 representing something that wasn't given to  
4 us?  
5 A. I don't think so.  
6 Q. So we're going to ask at the  
7 break or overnight to get paper copies of the  
8 posters so that we can mark them. Okay?  
9 A. They all have Bates numbers on  
10 them.  
11 Q. Okay. Well, then we can mark  
12 them.  
13 All right.  
14 MS. SAULINO: I think this is a  
15 good time for a break.  
16 THE WITNESS: Okay.  
17 THE VIDEOGRAPHER: We're off  
18 the record at 6:40.  
19 (Recess taken, 6:39 p.m. to  
20 7:05 p.m.)  
21 THE VIDEOGRAPHER: We are back  
22 on the record at 7:06.  
23 (Whereupon, Deposition Exhibit  
24 Egilman 29, USA Oxycodone consumption

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1 (mg/capita) 1980 -- 2015, was marked  
 2 for identification.)  
 3 Q. (BY MS. SAULINO) Dr. Egilman,  
 4 we have marked as Exhibit 29 what I  
 5 understand from your counsel to be a  
 6 compilation of paper copies of the posters  
 7 that you brought with you today.  
 8 A. She's not my counsel, but  
 9 that's terrific. These are copies of the  
 10 posters.  
 11 Q. Those are the copies of the  
 12 posters, you agree?  
 13 A. But Ms. Conroy is not my  
 14 counsel.  
 15 Q. So you agree that's what  
 16 Exhibit 29 is, though?  
 17 A. Right.  
 18 Q. Dr. Egilman, you said earlier  
 19 that there is not anything else that you  
 20 consider to be a part of your report other  
 21 than Exhibit 1F and Exhibits B1 through B489,  
 22 and all of their attached documents; right?  
 23 A. Right. And cited documents.  
 24 Q. In B1 to B489; right?

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1 A. Correct.  
 2 Q. Okay.  
 3 A. You've attached all of this  
 4 material, some of which is included there.  
 5 Some of which is, as I stated earlier,  
 6 supplemental bases to opinions and some of  
 7 which would be -- and that would be a  
 8 category. Some of the articles, for example,  
 9 came out this week.  
 10 So I don't know whether you  
 11 were going to call this part of the report or  
 12 not. But it's here. It's marked at the  
 13 deposition.  
 14 Q. So for the record what you are  
 15 pointing at and saying is "this," is  
 16 Exhibit 26, which are the colored folders  
 17 that you brought with you today?  
 18 A. Yes. I would say the material  
 19 in the folders, yes.  
 20 Q. And you previously had  
 21 testified to additional bases that you had in  
 22 one of the folders; right?  
 23 A. No, I think I went through  
 24 three or four folders of additional bases.

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1 There was the -- remember, I -- you took me  
 2 on -- you put me on plaintiff time, so there  
 3 were two plaintiff time breaks. So there  
 4 were additional bases one, and there was  
 5 plaintiff time break two. That was  
 6 additional bases. And plaintiff time two  
 7 which is additional bases.  
 8 Q. Okay.  
 9 Other than those additional  
 10 bases that we talked about earlier today, do  
 11 you have more additional bases sitting here  
 12 in front of us?  
 13 A. No.  
 14 Q. So your complete report and  
 15 bases are found in Exhibit 1F, Exhibits B1  
 16 through B489, the documents cited in  
 17 Exhibits B1 through B489, and the two  
 18 additional bases packets that you showed us  
 19 today; right?  
 20 A. Three additional bases packets.  
 21 MS. CONROY: That are reflected  
 22 in the transcript. They were already  
 23 gone through the transcript this  
 24 morning.

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1 MS. SAULINO: So we've --  
 2 Q. (BY MS. SAULINO) So  
 3 Exhibit 1F, Exhibits B1 through B489, the  
 4 exhibits -- the documents cited in Exhibits  
 5 B1 through B4.89, and the three additional  
 6 bases pieces that you cited earlier today  
 7 constitute your complete report; right?  
 8 A. Correct.  
 9 Q. Now, does the report,  
 10 Deposition Exhibit 1F and the attached  
 11 Exhibits B1 through B14 reflect a complete  
 12 set of the opinions you will express in this  
 13 case?  
 14 A. Those are a complete set of the  
 15 opinions that I'm expressing now at this  
 16 deposition.  
 17 I don't know what anybody else  
 18 is going to ask. For example, I think other  
 19 opinions have been elicited during this  
 20 deposition, during questioning. So I can't  
 21 predict what any of the defendants might ask  
 22 that might elicit other opinions.  
 23 Q. Dr. Egilman, as an expert in  
 24 this case, the opinions that you are offering

<p style="text-align: right;">Page 422</p> <p>1 as opinions that you are offering under your 2 expertise are contained in Deposition 3 Exhibit 1F and the attached Exhibits B1 4 through B489; correct? 5 A. Right. These are the opinions 6 I'm offering today. 7 Q. And you intend to offer 8 additional opinions at trial that you are not 9 disclosing today? 10 MS. CONROY: Objection. 11 THE WITNESS: No. 12 Q. (BY MS. SAULINO) Do the 13 documents and other evidence that you cite in 14 Exhibits B1 through B489 to your report 15 constitute a complete list of all of the 16 bases and reasons for your opinions? 17 A. And now you left things out. 18 If you go back to the original summary that I 19 agreed to, yes. 20 Q. Okay. Fair enough. Do the 21 documents and other evidence that you cite in 22 Exhibits B1 through B489 plus the three 23 additional bases that we discussed earlier 24 today constitute a complete list of all of</p>	<p style="text-align: right;">Page 424</p> <p>1 particularly worked on, I think, Allergan. 2 Q. Okay. 3 A. But otherwise, no. 4 Q. Was your staff or students 5 assigned to any particular issue? 6 A. Well, sure over the time, 7 different staff worked on different issues. 8 Q. Okay. Did you rely on your 9 staff to review deposition transcripts? 10 A. I think some, yes. 11 Q. Did you personally review every 12 deposition transcript in this litigation? 13 A. Oh, no. 14 Q. I want to direct your attention 15 to your report, page 110 of your report. Our 16 7.324. 17 Do you have that in front of 18 you? Do you have a copy of -- can we get it? 19 A. It was here. 20 MS. CONROY: Yeah, where did it 21 go? With the actual report itself. We had 22 that. 23 It was 1F. Is it in the 24 exhibits, then?</p>
<p style="text-align: right;">Page 423</p> <p>1 the bases and reasons for your opinions? 2 A. Yes. 3 MS. SAULINO: Okay. All right. 4 I'm handing over the mic. 5 EXAMINATION 6 BY MR. MCGARRIGLE: 7 Q. Good evening, Doctor. 8 A. How are you doing? 9 Q. I'm doing fine. My name is 10 Tom McGarrigle. I work with Reed Smith, and 11 we represent Amerisource in this deposition. 12 I'm going to have a few questions. And I'm 13 going to hope that you are succinct in giving 14 us your answers. 15 When you were assigning your 16 office and your staff and your students, were 17 they assigned to any particular defendant? 18 So were there certain students and certain 19 staff members that were designated to focus 20 solely on one particular or group of 21 defendants? 22 A. Well, do you know what? I 23 forgot one student. Lena Milton. And she 24 worked on a couple of things, but she also</p>	<p style="text-align: right;">Page 425</p> <p>1 Q. (BY MR. MCGARRIGLE) Doctor, 2 while you're looking at that you might want 3 to look to see if you have a copy of the 4 corresponding exhibit and whether it has been 5 changed or whether it has any notes on it. 6 MS. CONROY: 324? 7 MR. MCGARRIGLE: Yes. 8 THE WITNESS: Do you have the 9 324? 10 Okay. 11 Oh, she's looking at that. 12 MS. CONROY: I'm going to tell 13 you. 14 Yeah. You've got writing on 15 it. 16 Q. (BY MR. MCGARRIGLE) Let's get 17 this on the record. 18 Doctor, in opinion offered on 19 page 110 of your report, 7.3.24, it says 20 "AmerisourceBergen (ABC) was light on order 21 monitoring. The ABC focuses only on rapid 22 growth, not steady sales, and the focus on 23 big accounts only for suspicious order 24 monitoring."</p>

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1 Did I read that correctly?  
2 A. You did.  
3 Q. And it's a reference to  
4 Exhibit D324 hereto attached; right?  
5 A. Correct.  
6 Q. I'm going to have marked as an  
7 exhibit, Exhibit No. 30, that report --  
8 excuse me, that Exhibit B324.  
9 A. Do you want the one with my  
10 handwritten notes?  
11 Q. And did you put some  
12 handwriting on it?  
13 Let me ask you, first of all,  
14 did you -- have you changed your opinion?  
15 A. No.  
16 Q. Okay. And have you noted --  
17 made notes on the exhibit?  
18 A. Yes.  
19 Q. May I see it?  
20 A. Sure.  
21 Q. Can you read for me the notes  
22 that you wrote at the bottom?  
23 A. Yeah. Walgreens --  
24 Q. Of the exhibit?

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1 A. "Walgreens had data on all  
2 store sales."  
3 Q. Now, in support of the opinion  
4 offered in your report, the only support that  
5 you cite is this Exhibit B324; is that  
6 correct?  
7 A. The only opinion -- the only  
8 support for this particular opinion cited in  
9 this opinion is the one document. There are  
10 other documents, the Cardinal back-and-forth  
11 with Walgreens, and AmerisourceBergen  
12 stepping in, for example, that also relates  
13 to this.  
14 Q. Well, there's no reference in  
15 this to any cross-referencing to any other  
16 documents. Is that fair to say?  
17 A. Correct.  
18 Q. Is it also fair to say that  
19 there's no indication that you looked at any  
20 deposition testimony to support this opinion;  
21 correct?  
22 A. Correct.  
23 Q. There is no indication that you  
24 looked at any other documents?

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1 A. On this opinion?  
2 Q. On this opinion.  
3 A. Written on the opinion? That's  
4 correct.  
5 Q. So the only thing that you  
6 relied upon in coming up with this opinion is  
7 this e-mail from Tasha Polster of Walgreens  
8 dated October the 31st, 2013; is that  
9 correct?  
10 A. No.  
11 Q. In addition to that, what else  
12 have you relied upon in reaching this  
13 opinion?  
14 A. Do you want give to me the  
15 AmerisourceBergen section?  
16 There are other documents, but  
17 the main narrative here is when Walgreens got  
18 hit with the \$80 million penalty for  
19 overselling, they went to Cardinal to take  
20 over the Jupiter and supply and also the  
21 other six. Cardinal basically refused to do  
22 that, and they said it's not just six  
23 pharmacies that have problems. It's 374  
24 pharmacies that have problems.

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1 And since Cardinal refused to  
2 step in, Walgreens went to AmerisourceBergen,  
3 and Bergen stepped in and agreed to supply  
4 all of those stores and take over the Jupiter  
5 facility for Walgreens.  
6 Notwithstanding Cardinal's  
7 evaluation of the fact that those orders from  
8 those pharmacies were not proper. And  
9 subsequent to that, Walgreens bought  
10 26 percent of Amerisource. So that's the  
11 gist of it. That's in the other documents.  
12 Q. And I note that the  
13 Special Master has gone, and ever since he's  
14 gone, your answers are getting longer and  
15 more nonresponsive, so I'm going to ask you  
16 to focus on my questions.  
17 This opinion that you're  
18 offering is an opinion about the Amerisource  
19 Order Monitoring Program; isn't that correct?  
20 A. Correct.  
21 Q. And your opinion about that  
22 program is that it was late on order  
23 monitoring, that it focused only on rapid  
24 growth, not steady sales. And your only



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1 basis for those opinions on the Order  
2 Monitoring Program is based on this e-mail.  
3 This is the only thing that you put in your  
4 report that allowed to us figure out what is  
5 the doctor relying on. Is that fair?  
6 A. No.  
7 Q. Is there anything in your  
8 report with respect to this opinion that  
9 allows us to know what the -- what the  
10 hypotheses that you started with? The  
11 question that you asked? Is there anything  
12 that I missed when I read your report and  
13 when I read your exhibit that tells me what  
14 the beginning hypotheses was?  
15 A. Well, the hypotheses -- is it  
16 explicitly stated here? No.  
17 Q. Okay. And is there anything in  
18 this report that tells me whether or not you  
19 revised your hypotheses during the course of  
20 your investigation and your study?  
21 A. No.  
22 Q. Okay.  
23 Is it fair to say that the  
24 basis for the statement that ABC focuses only

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1 on rapid growth is in -- is based upon the  
2 second paragraph of Tasha Polster's e-mail,  
3 where it states "Investigators look at rapid  
4 growth for a location and whether the order  
5 triggers a threshold."  
6 Do you see that?  
7 The second sentence.  
8 A. I see that. You asked a  
9 question.  
10 Q. Yeah.  
11 A. Do you want me to answer  
12 that did you read it correctly or do you want  
13 me to answer the question?  
14 Q. You can answer the question.  
15 A. No.  
16 Q. Okay. The e-mail that you  
17 cited as support refers to rapid growth.  
18 Your opinion, however, adds the word "only";  
19 correct?  
20 A. Correct.  
21 Q. So Walgreens wasn't saying that  
22 Amerisource's program only focused on rapid  
23 growth. That's something that you came up  
24 with; correct?

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1 A. No.  
2 Q. Okay. Is it fair to say that  
3 in the Walgreen e-mail, they do not limit the  
4 rapid growth by the word "only"?  
5 A. Yes.  
6 Q. Is it also fair to say that  
7 the -- that the basis for your opinion that  
8 the focus of the Amerisource Order Monitoring  
9 Program is on big accounts only is the  
10 statement that is highlighted on your exhibit  
11 that they really only focus on heavy hitters?  
12 A. Yes.  
13 Q. Okay. And is it -- did you  
14 write this or did one of your students write  
15 this or did one of your staff members write  
16 this opinion?  
17 A. I wrote this.  
18 MS. CONROY: Objection.  
19 Q. (BY MR. MCGARRIGLE) And when  
20 you were writing this opinion, did you  
21 attempt to be very careful and be very  
22 accurate?  
23 A. I tried to be as accurate as  
24 possible.

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1 Q. Okay. Is it fair to say that  
2 you took the sentence, "They really only  
3 focus on heavy hitters" to mean a reference  
4 to a customer?  
5 Is that how you interpreted  
6 this?  
7 A. Yes.  
8 Q. Yeah, because -- I want you to  
9 be really careful here, because this opinion  
10 is based on double hearsay, isn't it?  
11 This is -- this is  
12 Tasha Polster writing something based on a  
13 discussion that she had with a Joe Tomkiewicz  
14 of Amerisource; isn't that right?  
15 MS. CONROY: Objection.  
16 THE WITNESS: No.  
17 Q. (BY MR. MCGARRIGLE) Okay.  
18 This isn't a case where Ms. Polster is  
19 talking -- is reporting back of her meeting  
20 with Joe Tomkiewicz at Amerisource and  
21 talking about the Order Monitoring Program?  
22 A. Not only, no.  
23 Q. With respect to the sentence  
24 that you have highlighted in red, right after

<p style="text-align: right;">Page 434</p> <p>1 the sentence "They really only focus on the 2 heavy hitters" that you interpreted to mean 3 the customers, the next sentence says "OxyIR 4 30 MK combinations of cocktails with 5 hydrocodone and/or oxycodone advantage of our 6 system that we monitor CS or controlled 7 substance." 8       Are you familiar with opioid 9 cocktails? Are you familiar with opioid 10 cocktails? 11       A. Mixtures? Yes. 12       Q. What's a Trinity? 13       A. That, I don't know. 14       Q. What's a Las Vegas? 15       A. That, I don't know. 16       Q. Did you ever hear that a 17 Trinity opioid cocktail was a combination of 18 a mixture of either hydrocodone or oxycodone 19 and benzodiazepine and a muscle relaxer? 20       A. No. 21       MS. CONROY: Objection. 22       Q. (BY MR. MCGARRIGLE) You don't 23 know anything about that. How about a Las 24 Vegas being a mixture of either hydrocodone</p>	<p style="text-align: right;">Page 436</p> <p>1 about when she was talking about the heavy 2 hitters. She's not talking about customers. 3 She's talking about drugs and drug 4 combinations, oxy, hydro, Trinities. 5       A. No, that's exactly what I 6 interpreted. 7       MS. CONROY: Objection. 8       Q. (BY MR. MCGARRIGLE) Oh. Okay. 9 So now you agree with me that the heavy 10 hitter reference that's being made is not to 11 heavy hitter customers, not big customers, 12 not major customers, but in fact is a 13 reference to the drugs that are -- that are 14 the more powerful opioids that have been 15 abused; is that your testimony? 16       A. No. This reference to heavy 17 hitters is to OxyIR, a combination of 18 cocktails with hydrocodone, and/or oxycodone. 19       Q. Okay. So you agree with me 20 that the reference to heavy hitters refers to 21 the drug; correct? 22       A. In that section, that's 23 correct. 24       Q. Okay. And you've inserted the</p>
<p style="text-align: right;">Page 435</p> <p>1 or oxycodone and benzodiazepine? Did you 2 ever hear that? 3       MS. CONROY: Objection. 4       THE WITNESS: No. 5       Q. (BY MR. MCGARRIGLE) Do you 6 think there's anything wrong with an order 7 monitoring system that takes opioid cocktails 8 that are used out on the street and looks at 9 combinations when orders are coming in of 10 both an opioid with benzo? Do you think 11 there's anything wrong with a system that 12 looks at that? 13       MS. CONROY: Objection. 14       THE WITNESS: That's certainly 15 something that should be looked at. 16       Q. (BY MR. MCGARRIGLE) So you're 17 not being critical of the ABC Order 18 Monitoring Program that is focusing and 19 looking at cocktail combinations, are you? 20       A. I'm not criticizing that part 21 of the sentence. Correct. I'm criticizing 22 the first part of the sentence. 23       Q. Right. And that's because you 24 misunderstood what Ms. Polster was talking</p>	<p style="text-align: right;">Page 437</p> <p>1 word, in your opinion, "only rapid growth." 2 Isn't that correct? 3       MS. CONROY: Objection, asked 4 and answered. 5       Q. (BY MR. MCGARRIGLE) I'm happy 6 with the answer. 7       Let's talk to -- in coming up 8 with this opinion, being critical of ABC's 9 Order Monitoring Program, did you -- can you 10 tell me what the OMP is for ABC? 11       A. No. 12       Q. Is that just too many letters 13 to deal with? Do you want me to break it 14 down? 15       A. Go ahead. 16       Q. All right. Order Monitoring 17 Program. 18       A. Right. 19       Q. Do you know Amerisource's Order 20 Monitoring Program? 21       A. Do I know how -- 22       Q. Do you know -- can you give me 23 the details of it? 24       A. They do it.</p>

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<p>1 Q. Yes.</p> <p>2 A. No.</p> <p>3 Q. Do you --</p> <p>4 A. It's changed over time. So</p> <p>5 you've got to give me a time. But I don't</p> <p>6 know what -- as I sit here today without</p> <p>7 reviewing it for any period of time.</p> <p>8 Q. For any of the periods of time.</p> <p>9 Do you know how they -- how the Amerisource</p> <p>10 Order Monitoring Program calculates</p> <p>11 thresholds?</p> <p>12 That's a yes, no?</p> <p>13 A. Do you mean at any point in</p> <p>14 time?</p> <p>15 Q. Now. Can you tell me that?</p> <p>16 A. No.</p> <p>17 Q. Can you tell me, Doctor, can</p> <p>18 you tell me if you are aware that under the</p> <p>19 Order Monitoring Program, the focus is on</p> <p>20 looking at all sales, whether the sales come</p> <p>21 from a small, a medium, or a large customer?</p> <p>22 Do you know that?</p> <p>23 A. That's not what this says.</p> <p>24 Q. Well, this is coming from</p>	<p>1 only on rapid growth, not steady sales</p> <p>2 Focus on big accounts only for</p> <p>3 suspicious order monitoring, with</p> <p>4 revisions, was marked for</p> <p>5 identification.)</p> <p>6 Q. (BY MR. MCGARRIGLE) All right.</p> <p>7 Doctor, look at your report, page 80,</p> <p>8 paragraph 7121. "Opinion. Amerisource</p> <p>9 Bergen wanted to low key" -- in</p> <p>10 parenthesis -- "hide its association with</p> <p>11 pain care forum, PCF."</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. And in support of that, you</p> <p>15 cite us to Exhibit B121. I'll have that</p> <p>16 marked as Exhibit 31.</p> <p>17 (Whereupon, Deposition Exhibit</p> <p>18 Egilman 31, Opinion-AmerisourceBergen</p> <p>19 ("ABC") wanted to 'low key' (HIDE) its</p> <p>20 association with Pain Care Forum</p> <p>21 ("PCF") with attachments</p> <p>22 PPLP004210521-4210523,</p> <p>23 PPLP004279424-4279425, PPLP004303453,</p> <p>24 PPLP004303456-4303457,</p>
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<p>1 Walgreens, right?</p> <p>2 A. That's a Walgreens memo based</p> <p>3 on a meeting with Amerisource.</p> <p>4 Q. Now, I want you to take a look</p> <p>5 at another document.</p> <p>6 This will be -- looking at your</p> <p>7 report --</p> <p>8 A. Did you mark this?</p> <p>9 Q. That was -- that was marked and</p> <p>10 given --</p> <p>11 MR. MCGARRIGLE: Let's make</p> <p>12 that 30 and that 30A.</p> <p>13 (Whereupon, Deposition Exhibit</p> <p>14 Egilman 30, Opinion- AmerisourceBergen</p> <p>15 ("ABC") was light on order monitoring.</p> <p>16 The ABC focus is only on rapid growth,</p> <p>17 not steady sales Focus on big</p> <p>18 accounts only for suspicious order</p> <p>19 monitoring, was marked for</p> <p>20 identification.)</p> <p>21 (Whereupon, Deposition Exhibit</p> <p>22 Egilman 30A, Opinion-</p> <p>23 AmerisourceBergen ("ABC") was light on</p> <p>24 order monitoring. The ABC focus is</p>	<p>1 PPLPC018001477198-1477200,</p> <p>2 PPLPC022000926958-22000926959, was</p> <p>3 marked for identification.)</p> <p>4 Q. (BY MR. MCGARRIGLE) Did either</p> <p>5 your student or your staff member write this</p> <p>6 opinion?</p> <p>7 A. No.</p> <p>8 MS. CONROY: Objection.</p> <p>9 Q. (BY MR. MCGARRIGLE) Do you have</p> <p>10 a corresponding exhibit and has it changed or</p> <p>11 does it have any notes or modifications on</p> <p>12 it?</p> <p>13 MS. CONROY: There are no notes</p> <p>14 or modifications.</p> <p>15 Q. (BY MR. MCGARRIGLE) Okay. So</p> <p>16 it's clean, and you haven't changed your</p> <p>17 opinion; correct?</p> <p>18 A. No.</p> <p>19 Q. And in this, you're actually --</p> <p>20 is this one or two opinions? Is this an</p> <p>21 opinion, 1, that AmerisourceBergen is</p> <p>22 associated with a pain care forum, and 2,</p> <p>23 it's trying to hide that association?</p> <p>24 MS. CONROY: Do you have a copy</p>

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1 of the exhibit for me?

2 MR. MCGARRIGLE: Probably not.

3 There you go.

4 MS. CONROY: Thank you.

5 THE WITNESS: Two --

6 I think --

7 Q. (BY MR. MCGARRIGLE) The

8 question is --

9 A. I think it could be either 1 or

10 2.

11 Q. Okay.

12 And the basis for this opinion,

13 in primary part, your best document is this

14 low key memo exchange between Rita Norton of

15 Amerisource and Burt Rosen; is that correct?

16 MS. CONROY: Objection.

17 THE WITNESS: Correct.

18 Q. (BY MR. MCGARRIGLE) Do you

19 know if either Mr. Rosen or Ms. Norton were

20 deposed in this litigation?

21 A. I think Rosen was.

22 Q. Did you read his deposition?

23 A. I can't recall. It's possible.

24 Q. Do you recall anything about

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1 his deposition with respect to this

2 January 31st, 2008 e-mail exchange with

3 Ms. Norton?

4 A. No.

5 Q. Do you know if Ms. Norton was

6 deposed in that case?

7 A. That, I don't know.

8 Q. Were you interested at all in

9 trying to figure out just what the heck this

10 e-mail exchange really meant to see whether

11 or not they were ever deposed on it?

12 MS. CONROY: Objection.

13 THE WITNESS: I was pretty sure

14 they weren't deposed on it.

15 Q. (BY MR. MCGARRIGLE) Well,

16 whatever, Mr. -- I will tell you, and I'll

17 represent to you that -- I want you to assume

18 that Ms. Norton was in fact deposed.

19 A. That, I understand. But

20 whether she was deposed on this topic, I

21 don't think so.

22 Q. Did you ever ask your students

23 or your staff members to go review

24 Mr. Rosen's deposition testimony or

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1 Ms. Norton's deposition testimony before you

2 came up with the opinion that ABC was

3 associated with the pain care forum and

4 really wanted to hide that association?

5 Did you do that?

6 A. Rosen, I think I read. Not

7 Norton.

8 Q. Okay. Not Norton.

9 In fact, a large part of your

10 opinion to hide is based on the fact that

11 Ms. Norton used the word "low key"; correct?

12 A. Correct.

13 Q. Among your many specialties and

14 areas of expertise, do you include the

15 English language?

16 It's not meant to be a joke.

17 Do you include the English language as an

18 area where you're an expert.

19 A. I think I'm fluent in English.

20 Q. All right. What definition did

21 you use to equate the word "low key" with the

22 word "hide"?

23 A. I didn't get a dictionary

24 definition.

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1 Q. Why did you use the word

2 "hide"? "Hide" sounds sinister. It sounds

3 like you did something wrong and you're

4 trying to hide something. Is that what you

5 were trying to imply in your opinion?

6 A. Something sinister?

7 Q. Yeah.

8 A. No. Just stating a fact.

9 Q. People that hide usually are

10 trying to cover up something, aren't they?

11 A. Not necessarily.

12 Q. Do you know the definition of

13 low key means laid back? It means not

14 elaborate, not showy, not intense,

15 restrained. Low profile. Relaxed.

16 Easygoing. Calm.

17 Do you accept those definitions

18 of the word "laid back"?

19 Do you accept those

20 definitions --

21 A. Sure.

22 Q. -- of the word "laid back"?

23 A. Sure.

24 Q. What I don't see as the

<p style="text-align: right;">Page 446</p> <p>1 definition of laid back, however, is the word 2 "hide." 3 A. I don't know. I haven't 4 looked. 5 Q. Isn't this really, this e-mail 6 exchange that you're basing this whole 7 opinion on, isn't it an e-mail exchange where 8 it's simply they were setting up a meeting 9 and Ms. Norton said -- a meeting to discuss 10 the possibility of being involved with the 11 forum, and Ms. Norton said, "I want to keep 12 this informal? I want this to be laid back?" 13 Isn't that a fair reading of 14 what was going on there? 15 MS. CONROY: Objection. 16 THE WITNESS: No. 17 Q. (BY MR. MCGARRIGLE) I want you 18 to assume that Ms. Norton did testify and in 19 fact was questioned about this very document 20 in her testimony, and she said that meeting 21 in fact took place. And following the 22 meeting with Ms. Norton, they decided that 23 they didn't want to join the forum and in 24 fact have never been a member of the forum.</p>	<p style="text-align: right;">Page 448</p> <p>1 opinion even though you've now found out new 2 information; correct? 3 A. Doesn't change the opinion that 4 they didn't want to be associated publicly 5 with the pain care forum. 6 Q. You also cite six other 7 documents in this exhibit to support your 8 view that back in 2008, ABC was associated 9 with the pain care forum and was trying to 10 hide that. 11 Am I correct? 12 A. Where are you talking? 13 Q. There's references to other 14 documents in the exhibit. 15 A. In this exhibit? 16 Q. Yes. 17 Were you aware of that? 18 A. All I have in this -- 19 Q. What about in your folders back 20 there because I'm sure they have this in 21 there. 22 A. Let's see that. 23 Q. Could you -- did you have a 24 chance to look at those?</p>
<p style="text-align: right;">Page 447</p> <p>1 Assuming that to be true, that 2 ABC not only didn't hide their association 3 with the forum, but have never been 4 associated with the pain care forum, would 5 that change your opinion expressed in this 6 exhibit? 7 A. No. 8 Q. So despite the record testimony 9 that the client -- that ABC has never been 10 associated with the pain care -- the pain 11 care forum, you still maintain and still it's 12 your expert opinion that not only is ABC 13 associated with the pain care forum, but it's 14 hiding it; correct? 15 A. No. 16 Q. Okay. What is your opinion? 17 A. That they wanted to hide its 18 association with the pain care forum, and 19 they didn't join the pain care forum, if what 20 you said is true. 21 Q. But you don't know that until 22 today; correct? 23 A. Correct. 24 Q. And it doesn't change your</p>	<p style="text-align: right;">Page 449</p> <p>1 A. I've got it. 2 Q. They should be the exhibits. 3 A. I've got it. 4 Q. So in support of this opinion 5 that in 2008, ABDC was associated with the 6 pain care forum and was trying to hide it, 7 you say six documents dated July 2010, two 8 years after this e-mail, 2012, four years 9 after the e-mail, three of them dated 2016, 10 which was eight years after the e-mail, and 11 2017, nine -- almost nine years after the 12 e-mail, how desperate were you to support 13 this opinion by using documents that occurred 14 almost a decade after this supposed event? 15 MS. CONROY: Objection. 16 THE WITNESS: Not at all. 17 Q. (BY MR. MCGARRIGLE) Do any of 18 those documents, any of those six documents 19 even have the name "Amerisource" on them? 20 A. Let's see. 21 MS. WELCH: Counsel, if you're 22 not done, we need to take a break. 23 MS. CONROY: We're in the 24 middle of an answer here.</p>



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1 MS. WELCH: Sorry, I thought he  
2 had answered it.  
3 Q. (BY MR. MCGARRIGLE) I want you  
4 to assume, Doctor -- I'll help you out a  
5 little bit because we're pressed for time.  
6 There's 110 names on that e-mail, not one  
7 from Amerisource.  
8 A. On the cover, you mean?  
9 Q. Yes.  
10 A. Well, I'm looking.  
11 [Document review.]  
12 THE WITNESS: Well, this is  
13 a -- first of all, it's an HDMA.net  
14 document. So it's an HDMA document of  
15 which Amerisource was a member.  
16 The side e-mail also refers to  
17 HDMA testimony, of which  
18 AmerisourceBergen was a member.  
19 Q. (BY MR. MCGARRIGLE) Well,  
20 that's not your opinion. Your opinion isn't  
21 that HDMA was trying to hide their  
22 association with the forum, that Amerisource  
23 was. Correct?  
24 A. Let me just see what the

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1 question was before you interrupted the  
2 answer.  
3 [Document review.]  
4 THE WITNESS: Well, this says  
5 HDMA -- this is referring to McKesson  
6 joining the pain care forum.  
7 Bert Rosen says, if you're a  
8 member of HDMA, you're already a  
9 member of the pain care forum.  
10 AmerisourceBergen was a member of  
11 HDMA, so according to Bert Rosen, they  
12 were members of the pain care forum  
13 through their membership in HDMA. And  
14 AmerisourceBergen is on the next  
15 document in an e-mail; Norton, in  
16 fact.  
17 Q. (BY MR. MCGARRIGLE) And that's  
18 dated what date?  
19 A. 2017.  
20 And this is -- I think  
21 Bert Rosen acting in his role as the pain  
22 care forum lobbyist.  
23 [Document review.]  
24 That's it.

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1 MR. MCGARRIGLE: And that's it  
2 for me. Thanks.  
3 THE VIDEOGRAPHER: Going off  
4 the record. The time is 7:43 p.m.  
5 (Proceedings recessed at  
6 7:43 p.m.)  
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1 CERTIFICATE  
2 I, DEBRA A. DIBBLE, Registered  
3 Diplomate Reporter, Certified Realtime  
4 Reporter, Certified Realtime Captioner,  
5 Certified Court Reporter and Notary Public,  
6 do hereby certify that prior to the  
7 commencement of the examination, DR. DAVID  
8 EGILMAN was duly sworn by me to testify to  
9 the truth, the whole truth and nothing but  
10 the truth.  
11 I DO FURTHER CERTIFY that the  
12 foregoing is a verbatim transcript of the  
13 testimony as taken stenographically by and  
14 before me at the time, place and on the date  
15 hereinbefore set forth, to the best of my  
16 ability.  
17 I DO FURTHER CERTIFY that pursuant  
18 to FRCP Rule 30, signature of the witness was  
19 not requested by the witness or other party  
20 before the conclusion of the deposition.  
21 I DO FURTHER CERTIFY that I am  
22 neither a relative nor employee nor attorney  
23 nor counsel of any of the parties to this  
24 action, and that I am neither a relative nor  
25 employee of such attorney or counsel, and  
26 that I am not financially interested in the  
27 action.  
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**INSTRUCTIONS TO WITNESS**

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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**ERRATA**

Page	LINE	CHANGE
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**ACKNOWLEDGMENT OF DEPONENT**

I, DAVID S. EGILMAN, M.D., MPH, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

DAVID S. EGILMAN, M.D., MPH      DATE

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

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**LAWYER'S NOTES**

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